



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 6 दिसम्बर, 2010 / 15 अग्रहायण, 1932

हिमाचल प्रदेश सरकार

DEPARTMENT OF LABOUR AND EMPLOYMENT

NOTIFICATION

Shimla-2, 29th October, 2010

No. Sharm (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	5/2009	S/Shri Ashwani Kumar Vs Chief Conservator of Forest, H.P. & Ors.	02-08-2010
2.	91/2006	Babu Ram Vs Divisional Manager, H.P. State Forest Corpn., Solan.	07-08-2010
3.	104/2003	Ram Dutt Vs DFO, Solan.	05-08-2010
4.	5/2007	Gulam, Sabir Vs MD, HRTC, Shimla-1.	04-08-2010
5.	36/2006	Baldev Sharma & Ors. Vs The Area Manager, Bata wholesale Depot, Parwanoo, Solan.	04-08-2010
6.	79/2009	Shankar Dutt Vs M.D. M/S Bhartendu Printing Press, Shimla-1.	11-08-2010

7.	17/2006	Amar Dev Vs President, Gujrat Ambuja Cement Ltd., Darlaghat, District Solan & Ors.	10-08-2010
8.	103/2005	Pintoo Yadav Vs Manager, M/S Surya Pharmaceuticals Ltd., Baddi, Solan.	11-08-2010
9.	62/2005	Mathu Ram Vs XEN, HPPWD(B&R), Solan.	12-08-2010
10.	64/2005	Prem Raj Vs MD, Tourism Development Corporation Ltd, Shimla-1 & Ors.	31-08-2010
11.	136/2007	Ranjeet Singh Vs G.M. M/S Birla Textile Mills Ltd., Baddi, Solan.	12-08-2010
12.	40/2009	Smt. Sunita Sharma Vs M/S Himachal Fastmers Parwanoo, Solan.	31-08-2010
13.	63/2005	Smt. Tara Devi Vs Officer Incharge, Air Force School, Kasauli, Solan.	12-08-2010
14.	4/2008	Smt. Vishmbhari Devi Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
15.	5/2008	Dev Raj Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
16.	6/2008	Ram Swaroop Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
17.	7/2008	Jeet Singh Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
18.	8/2008	Smt. Nirmala Devi Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
19.	9/2008	Sanjeev Kumar Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
20.	10/2008	Smt. Tripta Dev Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
21.	11/2008	Yudhbir Singh Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
22.	12/2008	Dalbir Singh Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010
23.	13/2008	Avtar Singh Vs The Project Director, Kandi Integrated water shed, Tank Road, Solan.	07-08-2010

By order,
Sd/-
ACS (Labour & Employment).

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT SOLAN.

Ref no. 136 of 2007
Instituted on 1.11.2007.
Decided on. 12.8.2010.

Ranjeet Singh S/o Shri Geeta Ram R/o Village Jamrari, P.O Goyla Panner, Tehsil Nalagarh, District Solan, HP.

Petitioner.....

Vs.

The General Manager M/s Birla Textile Mills Ltd., Village Bhatoli Kalan Khurd, Sai Road, Baddi, Tehsil Nalagarh, District Solan, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent : Shri Jagdish Thakur, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the action of M/s Birla Textile Mills Ltd., Village Bhatoli Kalan Khurd, Sai Road, Baddi, Tehsil Nalagarh, District Solan, HP to terminate the services of Shri Ranjeet Singh S/o Shri Geeta Ram workman w.e.f. 9.5.2005 and not to pay him salary for the month of April & May, 2005 without complying the provisions of the Industrial disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that he had joined as plumber-cum-fitter with the respondent on 1.4.2001 and continued to remain as such till 8.5.2005. On 9.5.2005, he was not allowed to resume his duties. His last drawn wages were Rs. 2470 per month. It is alleged that with ulterior motive, the respondent management terminated his services orally. Although, he continued to visit the gate of the respondent company since 9.5.2005 but all in vain. In fact, the respondent had concocted a false story that he used to remain absent from duty but in this regard, neither any letter was issued to him nor any enquiry got conducted. During the service tenure, he had completed 240 days in each calendar year including twelve months preceding his termination. It has also been mentioned that he is unemployed. Since, his services were terminated in contravention of the provisions of the Industrial disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated, in service, with all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections including that the petitioner had abandoned the job. On merits, it has been asserted that the petitioner had continued to remain in the employment of respondent till 16.5.2005 and thereafter, he absented himself and did not report back to duties. As a matter of fact, he had remained on sanctioned leave w.e.f. 9.5.2005 to 16.5.2005. It is further pleaded that the petitioner is running his own business at Baddi and that he had not collected the wages for the month of April & May, 2005 which are Rs. 1415/- and Rs. 167/- respectively. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 2.3.2009.

1. Whether the action of M/s Birla Textile Mills Ltd., Bhatoli Kalan Khurd to terminate the services of the petitioner w.e.f. 9.5.2005 without the payment of his salary for the month of April & May, 2005 and without complying the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to?

OPP.....

3. Whether the petitioner has abandoned the job of his own w.e.f. 17.5.2005?

OPR.....

4. Relief.

6. I have heard the Ld. Counsel for the parties and have gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue no.3 No.

Relief Reference answered in favour of the petitioner as per operative part of award.

Reasons for findings.

Issue no. 1

8. Petitioner (PW-1) has supported all the material facts while appearing in the witness box including that his services were terminated w.e.f. 9.5.2005 and that he never remained absent from duties. When, his services were terminated, neither any notice was issued nor he was paid any compensation. He was also not supplied with any charge sheet and no enquiry was got conducted against him. In each calendar year, he had completed 240 days. In the

cross examination, he admitted of having proceeded on sanctioned leave from 9.5.2005 to 16.5.2005 but again stated that the same was not sanctioned. He denied of having left the job, on his own.

9. According to Shri R.K Sharma (RW-1), the petitioner had been granted leave from 9.5.2005 to 16.5.2005 and thereafter, he did not report for duties. As per the certified standing orders of the company, if a workman remains absent for consecutive days, it is required to be presumed that he had abandoned the job. In the cross examination, he admitted that no letter was issued to the petitioner to join his duties.

10. The version of the petitioner (PW-1) that he had completed 240 days in each calendar years goes unchallenged. Thus, on record, it stand duly proved that before his alleged termination, he had completed 240 days in twelve preceding calendar months. No doubt, the plea which has been taken by the respondent is that the petitioner had abandoned his job and did not turn up after 16.5.2005 but there is no evidence, on record, which could go to show that any letter/notice had been issued to the petitioner to resume his duties on having availed sanctioned leave. It was required of the respondent to have issued him notice to resume the duties but in the instant case no such procedure had been followed by the respondent before terminating his services. Thus, the defence plea that the petitioner was on sanctioned leave w.e.f. 9.5.2005 to 16.5.2005 is of no consequences particularly when the petitioner has stated that his services were orally terminated and he was not allowed to work. When the respondent fails to prove that the petitioner had abandoned the job, the version of the petitioner that his services had been orally terminated deserves to be believed.

11. As already stated above, the petitioner has proved to have completed 240 days in the twelve preceding calendar months from the date of his alleged termination. The respondent was required to issue notice and to pay compensation in the prescribed manner if the services of the petitioner were to be terminated. On the record, it stands proved that neither any notice nor wages in lieu thereof and also retrenchment compensation was paid to the petitioner. Thus, his termination is held to be illegal and improper. Accordingly, my answer to this issue is in "Yes".

Issue no. 2

12. It has been alleged by the petitioner that he is unemployed. However, when regard is given to his statement (PW-1) it is highlighted that he runs a vegetable shop. In the statement of Shri R.K Sharma (RW-1), it has also come that he (petitioner) runs a shop at Baddi. Moreover, before this court, it has not been stated by the petitioner (PW-1) that he is not gainfully employed. Thus, from the record, it is quite evident that he (petitioner) has been running a vegetable shop and for this reason, it can be that he is gainfully employed. In these circumstances, I am of the considered view that, he does not deserves to be granted back wages. It has been held by the *Hon'ble Supreme court in 2010 (1) SLJ SC 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that "**full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry**". Since, his services were terminated in contravention of the provisions of the Act, I am of the view that he is entitled to be reinstated in service with seniority and continuity but without back wages except for the months of April & May, 2005, as admitted by the respondent, in its reply. Accordingly, my answer to this issue is in "Yes".

Issue no. 3

13. While deciding issue no.1, I have already discussed the evidence qua the plea taken by the respondent that the petitioner had allegedly abandoned the job. Further while returning findings to that issue, I have held that the petitioner had not abandoned his job but on the contrary, his services were terminated in contravention of the provisions of the Act. For this reason, this issue does not require any more discussion and accordingly, my answer to it is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service with seniority and continuity but without back wages except for the months of April & May, 2005, as admitted by the respondent, in its reply. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records. Announced in the open court today this day of 12th August, 2010 in the presence of parties counsels.

A.S. Jaswal,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla,
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA.

Ref no. 4 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Vishmbhari Devi W/o Shri Ram Nath R/o Village & P.O, Kuneran, Tehsil Amb, District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Smt. Vishmbhari Devi W/o Shri Ram Nath w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of Jan., 1999, she had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, she had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, her services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, her termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding her retrenchment. Before her termination, she had competed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, her juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, her services had been terminated in contravention of the provisions of the Act, she deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that she continued to remain as such till 30.9.2005 when her services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, her disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response was received from her. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed her own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, seniority, back wages, and amount of compensation, the petitioner is entitled to? OPP.....
3. Whether the present petition is not maintainable as alleged? OPR.....
4. Relief.
6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.
- | | |
|------------|--|
| Issue no.1 | Yes |
| Issue no.2 | Entitled for continuity in service but without back wages. |
| Issue no.3 | No. |
| Relief. | Reference answered in favour of the petitioner, per operative part of award. |

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1999 in Kandi Project, where she continued, as such, till 30.9.2005, when her services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, her services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalyan Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005 Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, Ex. PB, on 30.9.2005, issued by the respondent, as per which, her services were no longer required w.e.f. 30.9.2005. She further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating her services, no notice or compensation was paid to her. Besides many juniors to her have been retained by the respondent after her termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding her termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Dr. Lal Chand Patyal (RW-1), it has come that the petitioner had been served with letter of termination, which is Ex. PB, but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. *In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka*, it has been held by the Hon'ble Supreme Court that :

"The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned".

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to

lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to her notice that her services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in "Yes".

Issue no. 2

13. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after her termination/disengagement, she had remained not gainfully employed. For her failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that, she does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"***. Since, her services were terminated in contravention of the provisions of the Act, I am of the considered view that, she is entitled to be reinstated in service with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that she(petitioner) be reinstated in service with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 5 of 2007
Instituted on 19.2.2007.
Decided on. 4.8.2010.

Gulam, Sabir S/o Shri Abdul Khalik, R/o House no. 124/6, Mohalla Shamsher Ganj, Nahan District Sirmour,
HP.

Petitioner.

VS.

The Managing Director, Himachal Transport Corporation, Shimla-1.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri M.L Sharma, Advocate.

For respondent: Shri Rajesh Verma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the action of the Managing Director, Himachal Transport Corporation, Shimla-1 not to promote Shri Gulam Sabir S/o Shri Abdul Khaliq Fitter against the post of Mechanic due to un-satisfactory work and conduct is proper and justified? If not, what relief of service benefits and from which date Shri Gulam Sabir S/o Shri Abdul Khaliq is entitled to”?

2. Briefly the case of the petitioner is that he was appointed as workshop mazdoor on regular basis w.e.f. 1.4.1971 and was promoted as fitter in the year, 1987. In the year, 1995, he was fit to be promoted in the mechanical grade but ignoring his claim, his juniors were promoted. Again, in the year, 1997, he was ignored and his juniors namely Rajinder Singh & Brij Bhushan were promoted in highly unjustified and arbitrary manner. Although, he had made several representations, to the concerned authorities, for the redressal of his grievance, but of no avail. In fact, he had been told that he was not found fit to be promoted by the departmental promotion committee. Further, promotion from mechanical grade from fitter is not selection post but the same is on the basis of senioritycum- merit. Since, his service record was good and that for the last 3-5 years, he had not earned any adverse entry, there was no question to ignore him. Earlier, he had filed an OA no. 2488/1998 for the redressal of his grievances but the same was withdrawn with the liberty to approach the appropriate forum. Since, he was not promoted, in order to give undue benefits to his juniors and that he (petitioner) had rendered his service, honestly, to the entire satisfaction of his superiors, the respondent corporation deserves to be directed to promote him from the date when his juniors were promoted with all the consequential benefits.

3. The petition has been contested on having raised preliminary objections including maintainability and bad for delay and latches. On merits, it has been asserted that the Departmental Promotion Committees (DPCs), which were held in the years 1995 and 1997, to the post of mechanic, had considered the name of the petitioner alongwith other eligible candidates, on 4.7.1995 and 9.7.1997 but on both the occasions, he was found unfit for promotion. In fact, his work and conduct had been found unsatisfactory as he was charge-sheeted and penalized several times. As far as the representation of the petitioner is concerned, the same was considered and rejected by the authorities and vide memo dated 16.5.2000, he was informed accordingly. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. ***On the pleadings of the parties, the following issues were struck on 3.1.2008, by the then Presiding Judge, Labour court, Shimla.***

1. Whether the petitioner has not been promoted due to his own unsatisfactory work and conduct? If so, its effect? OPP.....
2. If issue no.1 is not proved in affirmative, to what relief, the petitioner is entitled to? OPP.....
3. Whether the present reference is not maintainable? OPR.....
4. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

- | | |
|------------|---|
| Issue no.1 | Decided accordingly in favour of the respondent. |
| Issue no.2 | Since, issue no.1 stands decided in favour of the respondent, this issue becomes redundant. |
| Issue no.4 | No. |
| Relief. | Reference answered against the petitioner, per operative part of award. |

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been promoted to the post of fitter, on 6.10.1987, from a workshop mazdoor against which post, he had been engaged/appointed on 1.4.1971. Although, the contention of the petitioner is that he has been illegally and unjustifiably ignored, for being promoted to the grade of mechanic in the years,, 1995 and

1997 but the defence version is to this effect that the case of the petitioner had been duly considered by the departmental promotion committee in the said years but since he was not found fit to be promoted, for this reason, he could not be promoted.

9. Shri Ramesh Dogra (RW-1) has stated from the relevant record that since, the service record of the petitioner was not good/satisfactory, for this reason, he was not promoted by the DPCs which were held on 4.7.1995 & 9.7.1997. Ex. RW-1/A, is the copy of his history sheet. A memorandum was issued to the petitioner on 15.10.1993, the copy of which is Ex. RW-1/B. Ex. RW-1/C is the copy of order dated 20.1.1994. Similarly, Ex. RW-1/D, is the copy of memorandum dated 16.1.1993 and Ex. RW-1/E, the copy of order dated 15.7.1994. As per show cause notice dated 16.1.1993, the petitioner had been issued warning on 15.7.1994. Thereafter, another show cause notice was issued to him, on 10.2.1998, the copy of which is Ex. RW-1/F. As per this notice, he had been censured as per order dated 18.3.1997, the copy of which is Ex. RW-1/G. On 21.7.1997, another charge sheet was issued to the petitioner, copy of which is Ex. RW-1/H. The petitioner had again been censured *vide* Ex. RW-1/A. Another, charge sheet was issued to him, copy of which is Ex. RW-1/M, one increment of the petitioner was stopped. Another charge sheet dated 13.5.1999, Ex. RW-1/N was issued and in consequence thereof, the petitioner was warned to be careful in future as per order dated 19.7.1997, copy of which is Ex. RW-1/O. The petitioner had also filed representation, which was dismissed on 16.5.2000, *vide* Ex. RW-1/P. The petitioner could not be promoted as his service record was not satisfactory. In the cross examination, he admitted that ACR's for the three years prior to 1995 had been conveyed to the petitioner but regarding the same, he had not produced the record in the court. He denied that since, the petitioner had been raising the demands of the employees, for being President of the union, for this reason, he was served with charge sheets. Record pertaining to DPCs, which were held in the years, 1995 & 1997, has not be produced in the court.

10. Petitioner (PW-1) while appearing in the witness box has supported this fact that in the year, 1995, he was not promoted to the post of mechanical grade and at that time his juniors S/Shri Brij Bhushan and Sita Ram, were promoted. Annual confidential reports had not been conveyed to him either before, 1995 or 1997. Although, he had represented several times but to no avail. In the cross examination, he has admitted the case of the respondent that on various occasions, he was charge sheeted and found guilty and that his one increment was also stopped by the disciplinary authority.

11. Shri Lal Chand (PW-2) who has been examined, as a witness, by the petitioner has also supported this fact that he (petitioner) had been penalized for misconduct and indiscipline several times and in this regard, entries were made in his service book. In the cross examination, he admitted that the name of the petitioner was considered for promotion but he was ignored as he had been found guilty, several times, after conducting due enquiries against him.

12. Even, from the evidence, which has been led by the petitioner, particularly, statement of Shri Lal Chand (PW-2) it is abundantly clear that on both the occasions i.e in the years 1995 & 1997, when DPCs were held, the name of the petitioner was considered but he had not been found fit for promotion, for the reason that in the enquiries, which had been conducted against him, he was found guilty several times.

12. Shri Ramesh Dogra (RW-1), has also proved this fact that in the DPCs which were held on 4.7.1995 & 9.7.1997, the name of the petitioner was considered but he could not be promoted as his service record was not good. He (RW-1) has further proved, on record, the various charge sheets/ show cause notices which had been issued to the petitioner and the various orders passed thereon. In the cross examination, the petitioner (PW-1) has himself admitted the case of the respondent that many times, he had been issued charge sheets and found guilty for misbehaving and that the disciplinary authority also stopped his increment.

13. In the face of the documentary as well as oral evidence, it is abundantly clear that the name of the petitioner had been duly considered by the Departmental Promotion Committee but on account of his service record, he could not be promoted and for this reason, his juniors were given promotion. The petitioner has not taken any steps to get the relevant record summoned in order to show that his service record which had been considered by the DPCs was better than the workmen/employees who had been promoted by ignoring him. Since, it is writ-large, on the record, that on many occasions, he was censured/issued warnings and also that his one increment was ordered to be stopped by the disciplinary authority, the contention of the petitioner that he had been illegally and unjustifiably superseded does not carry any weight. Consequently, I hold that the respondent has proved with satisfactory evidence, particularly documentary, that the petitioner had been ignored by the DPCs which were held in the years, 1995 & 1997, for the reason that his service record was not satisfactory/up to the mark. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no. 2

14. Since, while deciding issue no.1 above, I have held that the petitioner had not been promoted for the reason that his service record was not satisfactory, this issue becomes redundant.

15. It is not understandable as to why this reference is not maintainable. Apart from it, the learned counsel for respondent could not explain as to why this reference is not maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 4th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 5 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Dev Raj, S/o Shri Sharan Dass R/o Village & PO Kuneran, Tehsil Amb, District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Dev Raj, S/o Shri Sharan Dass w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of Jan., 1991, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep

Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response was received from him. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, seniority, back wages, and amount of compensation, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under. Issue no.1 Yes Issue no.2 Entitled for continuity in service but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1991 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalyan Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005 Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, Ex. PB, on 30.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him. Besides many juniors to him have been

retained by the respondent after his termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Dr. Lal Chand Patyal (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. PB but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after his termination/disengagement, he had remained not gainfully employed. For his failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. Since, his services were terminated in contravention of the provisions of the Act, I am of the considered view that, he is entitled to be reinstated in service with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 6 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Ram Swarooop S/o Shri Varyan Singh R/o Village Dandadi, P.O Churdu, Tehsil Amb, District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Ram Swaroop S/o Shri Varyam Singh w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of October, 1995, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had competed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response received from him. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, seniority, back wages, and amount of compensation, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes

Issue no.2 Entitled for continuity in service but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1995 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalya Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005 Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, Ex. PB, on 30.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him. Besides many juniors to him have been retained by the respondent after his termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Dr. Lal Chand Patyal (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. PB but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the

project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in "Yes".

Issue no. 2

13. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after his termination/disengagement, he had remained not gainfully employed. For his failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that, he does not deserve to be granted back wages. *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry". Since, his services were terminated in contravention of the provisions of the Act, I am of the considered view that, he is entitled to be reinstated in service with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 7 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Jeet Singh s/o Shri Rattan Chand R/o Village Dilva, P.O Diyada, Tehsil Amb District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, *Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.*

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Jeet Singh S/o Shri Rattan Chand w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of May, 1995, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response received from him. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, seniority, back wages, and amount of compensation, the workman is entitled to?

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes

Issue no.2 Entitled for continuity in service but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1995 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is

further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalyan Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005 Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, on 20.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him. Besides many juniors to him have been retained by the respondent after his termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Munshi Ram (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. RB-1 but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is quite evident, on record, that now w.e.f. 5.12.2006, the petitioner has been engaged by the Himlayan Project, successor of Kandi Project, and in this regard, he had also given his joining, vide Ex. RB. Thus, it is abundantly clear, on record, that the petitioner remained disengaged w.e.f. 1.5.2005 till 4.12.2006 when his services were reengaged by the successor project (Mid Himalyan Project). It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that during this period, he had remained not gainfully employed. For his failure, to bring evidence to this effect, and also to make allegation in his claim petition that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that for this period, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. Since, his services were engaged by the successor project i.e Mid Himalyan, I am of the considered view that w.e.f. 1.10.2005 till 4.12.2005, he is entitled to be granted seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be also granted seniority and continuity in service w.e.f. 1.10.2005 till 4.12.2005, for which period he had remained disengaged, but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 8 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Nirmala Devi, W/o Shri Chint Ram, R/o V.P.O Hamboli Chrudu, Tehsil Amb, District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Smt. Nirmala Devi, W/o Shri Chint Ram w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of July, 1995, she had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, she had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, her services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, her termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding her retrenchment. Before her termination, she had competed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, her juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, her services had been terminated in contravention of the provisions of the Act, she deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that she continued to remain as such till 30.9.2005 when her services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, her disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response was received from her. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed her own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, seniority, back wages, and amount of compensation, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes

Issue no.2 Entitled for continuity in service but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1995 in Kandi Project, where she continued, as such, till 30.9.2005, when her services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, her services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalyan Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005, Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, Ex. PB, on 30.9.2005, issued by the respondent, as per which, her services were no longer required w.e.f. 30.9.2005. She further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating her services, no notice or compensation was paid to her. Besides many juniors to her have been retained by the respondent after her termination. The perusal of the mandays chart Ex. PA, goes to show that in the

twelve calendar months preceding her termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Dr. Lal Chand Patyal (RW-1), it has come that the petitioner had been served with letter of termination, which is Ex. PB, but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to her notice that her services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after her termination/disengagement, she had remained not gainfully employed. For her failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that, she does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. Since, her services were terminated in contravention of the provisions of the Act, I am of the considered view that, she is entitled to be reinstated in service with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

14. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that she (petitioner) be reinstated in service with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 9 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Sanjeev Kumar S/o Shri Tirath Ram R/o Village Pandoa, P.O Pandoa Kalan, Tehsil Amb District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Sanjeev Kumar S/o Shri Tirath Ram w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of October, 1993, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response was received from him. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, seniority, back wages, and amount of compensation, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
Issue no.2	Entitled for continuity in service but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1993 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalyan Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005 Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, Ex. PB, on 30.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him. Besides many juniors to him have been retained by the respondent after his termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Dr. Lal Chand Patiyal (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. PB but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. *In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka*, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after his termination/disengagement, he had remained not gainfully employed. For his failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I

am of the considered view that, he does not deserve to be granted back wages. *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. Since, his services were terminated in contravention of the provisions of the Act, I am of the considered view that, he is entitled to be reinstated in service with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 10 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Tripta Devi W/o Shri Kuldeep Singh R/o V.P.O & Tehsil Amb, District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR. For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Smt. Tripta Devi W/o Shri Kuldeep Singh w.e.f. 30.9.2005 by the employer, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of September, 1993, she had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, she had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid**

Himalyan Project). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, her services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, her termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding her retrenchment. Before her termination, she had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, her juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, her services had been terminated in contravention of the provisions of the Act, she deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as unskilled labourer, in Kandi Project at Una and that she continued to remain as such till 30.9.2005 when her services stood terminated automatically, on the culmination of the project (Kandi). Since, the services of the petitioner stood automatically disengaged, on the completion of the project, her disengagement cannot be construed to be retrenchment as there was no work available on the culmination of the project. Even, an offer for engagement, on contractual basis, in Himalyan Project was given to the petitioner but no response was received from her. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed her own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.5.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of I.D Act, 1947 is illegal and unjustified?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, seniority, back wages, and amount of compensation, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes

Issue no.2 Entitled for continuity in service but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the year 1993 in Kandi Project, where she continued, as such, till 30.9.2005, when her services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project as is evident from the statement of Dr. Lal Chand (RW-1).

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, her services could not have been taken up in the successor project (Mid Himalyan). It is to be noted that Dr. Lal Chand Patiyal (RW-1), has stated that since Mid Himalyan Project was declared as successor project of Kandi, its infrastructure and records were transferred to Mid Himalyan Project. In these circumstances, it is quite apparent that

after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. As per Dr. Lal Chand Patiyal (RW-1), who has appeared into the witness box to support the case of the respondent, on all material particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that the notice dated 23.8.2005 Ex. PB had been given to the petitioner, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, Ex. PB, on 30.9.2005, issued by the respondent, as per which, her services were no longer required w.e.f. 30.9.2005. She further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating her services, no notice or compensation was paid to her. Besides many juniors to her have been retained by the respondent after her termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding her termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Dr. Lal Chand Patyal (RW-1), it has come that the petitioner had been served with letter of termination, which is Ex. PB, but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

"The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned".

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of the engagement of the petitioner, it had been brought to her notice that her services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in "Yes".

Issue no. 2

13. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after her termination/disengagement, she had remained not gainfully employed. For her failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that, she does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***"full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"***. Since, her services were terminated in contravention of the provisions of the Act, I am of the considered view that, she is entitled to be reinstated in service with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no. 3

14. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that she(petitioner) be reinstated in service with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the

appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 11 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Yudhbir Singh S/o Shri Raja Ram, R/o VPO Saloi, Tehsil Amb, District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Yudhbir Singh S/o Shri Raja Ram w.e.f. 30.9.2005 by the Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, seniority, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of Jan., 1997, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as daily paid labourer in the month of Jan., 1997, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, Kandi Project was to be completed on 30.9.2005, as such, a letter of termination dated 31.8.2005, had been served upon the petitioner. It is further pleaded that vide notification dated 26.6.1990, the Kandi Project had been started and it stood wound up w.e.f. 30.9.2005 vide

notification dated 15.9.2005. It was also declared that Mid Himalya Project, was to be the successor project of erstwhile Kandi Project and that all its infrastructure and records to stand transferred to the successor project. The government of HP, vide notification dated 15.9.2005, further ordered that the services of regular staff drawn from various participating line departments, who had been presently posted in Kandi Project were to be placed at the disposal of Chief Project Director of Mid Himalyan Project. The services of the petitioner stood terminated being a daily wage labourer. It is further asserted that the Kandi Project had not been executed throughout the state of HP, as such, the seniority of the workman was only maintained in the offices of concerned Assistant Project Director. Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his allegation that juniors to him have been allowed to continue in service, are totally baseless. It is further asserted that in consequence of the conciliation proceedings, the services of the petitioner have been reengaged w.e.f. 5.12.2006 and that he also gave his joining report. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 15.7.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, back wages, seniority and amount of compensation, the workman is entitled to?

OPP.....

3. Whether the claim petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
Issue no.2	Entitled for continuity in service but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no.1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the month of Jan., 1997 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project, vide notification dated 15.9.2005, the copy of which is Ex. RD. There is another notification dated 15.9.2005, the copy of which is Ex. RE, which goes to show that the services of the regular staff drawn from various participating line departments, presently posted in Kandi Project, were put at the disposal of Chief Project Director, HP Mid Himalyan Project initially for a period of two years w.e.f. 1.10.2005, for their further posting in various project offices as per requirement. As per this notification, the Chief Project Director was further authorized to engage the staff on contractual basis after obtaining the approval of competent authority, as per project implementation plan, for the execution of Mid Himalyan Project.

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not be taken up in the successor project (Mid Himalyan). It is to be noted that as per notification, the copy of which is Ex. RE, as referred to above, the Chief Project Director was authorized to get engaged staff on contractual basis, on having obtained approval of the competent authority. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. According to Shri Munshi Ram (RW-1), who has appeared into the witness box to support the case of the respondent, on all material, particulars, the services of the petitioner had stood terminated automatically, on the

completion of the Kandi Project, on 30.9.2005 and that he had also been served with letter of termination, Ex. RB-1, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, on 20.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him, besides many juniors to him have been retained by the respondent after his termination. The perusal of the mandays chart Ex. PA goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Munshi Ram (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. RB-1 but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is quite evident, on record, that now w.e.f. 5.12.2006, the petitioner has been engaged by the Himlayan Project, successor of Kandi Project, and in this regard, he had also given his joining, vide Ex. RB. Thus, it is abundantly clear, on record, that the petitioner remained disengaged w.e.f. 1.5.2005 till 4.12.2006 when his services were reengaged by the successor project (Mid Himalyan Project). It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that during this period, he had remained not gainfully employed. For his failure, to bring evidence to this effect, and also to make allegation in his claim petition that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that for this period, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.*** Since, his services were engaged by the successor project i.e Mid Himalyan, I am of the considered view that w.e.f. 1.10.2005 till 4.12.2006, he is entitled to be granted seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be also granted seniority and continuity in service w.e.f. 1.10.2005 till 4.12.2006, for which period he had remained disengaged, but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in

official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 12 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Dalbir Singh S/o Shri Khajana Ram R/o VPO Nanaon, Tehsil Palampur, District Kangra, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Dalbir Singh S/o Shri Khazana Ram w.e.f. 30.9.2005 by the Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, seniority, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of Jan., 1997, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as daily paid labourer in the month of Jan., 1997, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, Kandi Project was to be completed on 30.9.2005, as such, a letter of termination dated 31.8.2005, had been served upon the petitioner. It is further pleaded that vide notification dated 26.6.1990, the Kandi Project had been started and it stood wound up w.e.f. 30.9.2005 vide notification dated 15.9.2005. It was also declared that Mid Himalya Project, was to be the successor project of erstwhile Kandi Project and that all its infrastructure and records to stand transferred to the successor project. The government of

HP, vide notification dated 15.9.2005, further ordered that the services of regular staff drawn from various participating line departments, who had been presently posted in Kandi Project were to be placed at the disposal of Chief Project Director of Mid Himalyan Project. The services of the petitioner stood terminated being a daily wage labourer. It is further asserted that the Kandi Project had not been executed throughout the state of HP, as such, the seniority of the workman was only maintained in the offices of concerned Assistant Project Director. Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his allegation that juniors to him have been allowed to continue in service, are totally baseless. It is further asserted that in consequence of the conciliation proceedings, the services of the petitioner have been reengaged w.e.f. 5.12.2006 and that he also gave his joining report. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 15.7.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, back wages, seniority and amount of compensation, the workman is entitled to?

OPP.....

3. Whether the claim petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
Issue no.2	Entitled for continuity in service but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no.1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the month of Jan., 1997 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project, vide notification dated 15.9.2005, the copy of which is Ex. RD. There is another notification dated 15.9.2005, the copy of which is Ex. RE, which goes to show that the services of the regular staff drawn from various participating line departments, presently posted in Kandi Project, were put at the disposal of Chief Project Director, HP Mid Himalyan Project initially for a period of two years w.e.f. 1.10.2005, for their further posting in various project offices as per requirement. As per this notification, the Chief Project Director was further authorized to engage the staff on contractual basis after obtaining the approval of competent authority, as per project implementation plan, for the execution of Mid Himalyan Project.

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not been taken up in the successor project (Mid Himalyan). It is to be noted that as per notification, the copy of which is Ex. RE, as referred to above, the Chief Project Director was authorized to get engaged staff on contractual basis, on having obtained approval of the competent authority. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. According to Shri Munshi Ram (RW-1), who has appeared into the witness box to support the case of the respondent, on all material, particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that he had also been served with letter of termination, Ex. RB-1, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, on 20.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him, besides many juniors to him have been retained by the respondent after his termination. The perusal of the mandays chart Ex. PA goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 40 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Munshi Ram (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. RB-1 but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is quite evident, on record, that now w.e.f. 5.12.2005, the petitioner has been engaged by the Himlayan Project, successor of Kandi Project, and in this regard, he had also given his joining, vide Ex. RB. Thus, it is abundantly clear, on record, that the petitioner remained disengaged w.e.f. 1.5.2005 till 4.12.2006 when his services were reengaged by the successor project (Mid Himalyan Project). It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that during this period, he had remained not gainfully employed. For his failure, to bring evidence to this effect, and also to make allegation in his claim petition that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that for this period, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

Since, his services were engaged by the successor project i.e Mid Himalyan, I am of the considered view that w.e.f. 1.10.2005 till 4.12.2006, he is entitled to be granted seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be also granted seniority and continuity in service w.e.f. 1.10.2005 till 4.12.2006, for which period he had remained disengaged, but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in

official gazette. File, after completion\ be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, SHIMLA

Ref no. 13 of 2008.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Avtar Singh s/o Shri Gurbachan R/o VPO Panjaur, Tehsil & District Una, HP.

Petitioner.

VS.

The Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP. Now, **Mid Hills Water Shed Development Project, Solan District Solan, (HP) through its Chief Project Director.**

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR. For respondent: Shri Jagdish Knawar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Avtar Singh S/o Shri Gurbachan w.e.f. 30.9.2005 by the Project Director, Kandi Integrated Water Shed, Tank Road Solan, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, seniority, back wages and amount of compensation the aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that in the month of Feb., 1991, he had been engaged in the Integrated Water Shed Development Project, Kandi (hereinafter referred **Kandi Project**) and continued to remain as such till 30.9.2005. It has been alleged that although, he had been initially appointed/engaged in the Kandi Project but now its successor project is, HP Mid Himalyan Water Shed Development, project (hereinafter referred **Mid Himalyan Project**). For this reason, the authorities of the successor project are responsible for all the liabilities of Kandi Project, including for the services of the employees. As per letter, which was served upon the petitioner, on 20.9.2005, his services stood terminated w.e.f. 30.9.2005. It is averred that since the respondent did not serve one month's notice nor paid wages in lieu thereof and also failed to pay retrenchment compensation, his termination was illegal and unjustified for being in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Moreover, no approval had been obtained, from the appropriate government, regarding his retrenchment. Before his termination, he had completed 240 days in each calendar year. The respondent was also required to maintain the seniority of the workmen at State level. Apart from this, his juniors S/Shri Ashok Kumar, Shakti Chand and Kuldeep Chand, have been allowed to continue, in service of the respondent. In this way, the respondent has also violated the provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstatement in the successor project (Mid Himalyan Project), with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objection qua maintainability. On merits, it has been admitted that the petitioner had been engaged as daily paid labourer in the month of April 1991, in Kandi Project at Una and that he continued to remain as such till 30.9.2005 when his services stood terminated automatically, on the culmination of the project (Kandi). Since, Kandi Project was to be completed on 30.9.2005, as such, a letter of termination dated 31.8.2005, had been served upon the petitioner. It is further pleaded that vide notification dated 26.6.1990, the Kandi Project had been started and it stood wound up w.e.f. 30.9.2005 vide notification dated 15.9.2005. It was also declared that Mid Himalya Project, was to be the successor project of erstwhile

Kandi Project and that all its infrastructure and records to stand transferred to the successor project. The government of HP, vide notification dated 15.9.2005, further ordered that the services of regular staff drawn from various participating line departments, who had been presently posted in Kandi Project were to be placed at the disposal of Chief Project Director of Mid Himalyan Project. The services of the petitioner stood terminated being a daily wage labourer. It is further asserted that the Kandi Project had not been executed throughout the state of HP, as such, the seniority of the workman was only maintained in the offices of concerned Assistant Project Director. Since, the services of the petitioner stood automatically disengaged, on the completion of the project, his allegation that juniors to him have been allowed to continue in service, are totally baseless. It is further asserted that in consequence of the conciliation proceedings, the services of the petitioner have been reengaged w.e.f. 5.12.2006 and that he also gave his joining report. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 15.7.2009.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 30.9.2005 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? OPP.....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, back wages, seniority and amount of compensation, the workman is entitled to? OPP.....

3. Whether the claim petition is not maintainable as alleged? OPR.....

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
Issue no.2	Entitled for continuity in service but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. Admittedly, the petitioner had been initially engaged as daily wage worker/labourer in the month of April, 1991 in Kandi Project, where he continued, as such, till 30.9.2005, when his services stood disengaged/terminated. It is further an admitted fact that after the culmination of the Kandi Project, the Mid Himalyan Project came into being, as its successor project, vide notification dated 15.9.2005, the copy of which is Ex. RD. There is another notification dated 15.9.2005, the copy of which is Ex. RE, which goes to show that the services of the regular staff drawn from various participating line departments, presently posted in Kandi Project, were put at the disposal of Chief Project Director, HP Mid Himalyan Project initially for a period of two years w.e.f. 1.10.2005, for their further posting in various project offices as per requirement. As per this notification, the Chief Project Director was further authorized to engage the staff on contractual basis after obtaining the approval of competent authority, as per project implementation plan, for the execution of Mid Himalyan Project.

9. Undoubtedly, the contention of the respondent is to this effect that, since the petitioner was daily wage labourer, his services could not been taken up in the successor project (Mid Himalyan). It is to be noted that as per notification, the copy of which is Ex. RE, as referred to above, the Chief Project Director was authorized to get engaged staff on contractual basis, on having obtained approval of the competent authority. In these circumstances, it is quite apparent that after the culmination of Kandi Project and coming into being of the successor project (Mid Himalyan), the services of the petitioner could have been continued instead of terminating the same.

10. According to Shri Munshi Ram (RW-1), who has appeared into the witness box to support the case of the respondent, on all material, particulars, the services of the petitioner had stood terminated automatically, on the completion of the Kandi Project, on 30.9.2005 and that he had also been served with letter of termination, Ex. RB-1, which was perfectly valid.

11. The statement of the petitioner (PW-1) also goes to show that he admits of having received notice, on 20.9.2005, issued by the respondent, as per which, his services were no longer required w.e.f. 30.9.2005. He further

made it clear that he had completed 240 days in every calendar year, as per mandays chart Ex. PA, and that before terminating his services, no notice or compensation was paid to him, besides many juniors to him have been retained by the respondent after his termination. The perusal of the mandays chart Ex. PA, goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, w.e.f. 30.9.2005, since, on the said date, Kandi Project had been completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act, besides payment of retrenchment compensation. In the statement of Munshi Ram (RW-1), it has come that the petitioner had been served with letter of termination which is Ex. RB-1 but there is no evidence, whatsoever, which could go to show that the petitioner had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that:

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

12. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner, as per section 25F of the Act, even, if the Kandi Project was to be closed, on its completion. At this stage, I would also like to point out that the respondent has failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, the employer (Kandi Project) had not brought to the notice of the petitioner, that the project was short lived. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue no. 2

13. It is quite evident, on record, that now w.e.f. 5.12.2006, the petitioner has been engaged by the Himlayan Project, successor of Kandi Project, and in this regard, he had also given his joining, vide Ex. RB. Thus, it is abundantly clear, on record, that the petitioner remained disengaged w.e.f. 1.5.2005 till 4.12.2006 when his services were reengaged by the successor project (Mid Himalyan Project). It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that during this period, he had remained not gainfully employed. For his failure, to bring evidence to this effect, and also to make allegation in his claim petition that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that for this period, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. Since, his services were engaged by the successor project i.e Mid Himalyan, I am of the considered view that w.e.f. 1.10.2005 till 4.12.2005, he is entitled to be granted seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no. 3

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be also granted seniority and continuity in service w.e.f. 1.10.2005 till 4.12.2005, for which period he had remained disengaged, but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 17 of 2006
Instituted on 20.2.2006.
Decided on. 10.8.2010.

Amar Dev S/o Shri Durga Ram R/o Village Suli, P.O Darlaghat, Tehsil Arki, District Solan, HP.

Petitioner.

VS.

1. President Gujrat Ambuja Cement Ltd. Darlaghat Solan, HP.

2. Manager M/s Gujrat Ambuja Cement Ltd. Darlaghat, Tehsil Arki, District Solan, HP.

Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate. For respondents: Shri Peeyush Verma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Amar Dev S/o Shri Durga Ram workman by the President Ambuja Cements Ltd., Darlaghat, District Solan, HP w.e.f. 31.3.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation Shri Amer Dev is entitled to”?

2. In nutshell the case of the petitioner is that initially he had been appointed/engaged as Dak Runner, in the year, 1992 by the respondents and that he worked as such for six months before his services were dispensed with. Again, in the month of September, 1996, he was reengaged, as such, and worked till October, 1998 when his services were dispensed with. It is further averred that w.e.f. 19.4.1999, he was reengaged as conductor by the respondents, in Bus No. HP-07-3680 (hereinafter referred Bus) at a fixed salary of Rs. 2200/- per month + Rs. 5/-, daily expenses. After some time, he was changed from aforesaid Bus to another bus of the respondent company and continued to work till 31.3.2002, when his services were terminated without notice and following the provisions of Industrial disputes Act, 1947 (hereinafter referred Act). He had also completed 240 days with the respondents. Persons junior to him, are still working with the respondents. During the period i.e. w.e.f. 1996 till 31.3.2002, when he had worked with the respondents, deduction from his salary towards Provident Fund and gratuity etc. had been made by the respondents. Since, his services were terminated on 31.2.2002, in contravention of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability, estoppel and that the petitioner has not come with clean hands as there is no relationship of employer and employee between the parties. On merits, it has been specifically denied that the petitioner had been appointed/engaged as Dak Runner in the year, 1992 as alleged. In fact, since, he had never been engaged, there was no question of dispensing with his services as alleged. It has further been asserted that he might have been employed by any of the contractor(s), working at the sites of the respondents. Such contractors are being employed by the respondents for specific period or to perform specific job/work and after their completion, they (contractors) wind-up their business and leave the sites of the respondents. The workers employed by such contractors are not related with the respondents, in any manner, who do not play any part in their appointments/terminations. It has been specifically denied that in the year, 1999, the petitioner had been reengaged as conductor by the respondents in the Bus at the fixed salary, as alleged. It has further been denied that after some time, the services of the petitioner were changed from the aforesaid Bus to another bus. It is further specifically asserted that the petitioner had never remained conductor in any of the buses owned by the respondent. As far as the aforesaid Bus is concerned that is owned by HRTC and for this reason, he could not have been employed in the said Bus. It has further been denied that he had worked till 31.3.2002 and that his services were terminated.

4. No rejoinder filed. On the pleadings of the parties, the following issues were struck on 15.6.2007.

1. Whether the services of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP.....
3. Whether the petitioner has no locus standi and petition is not maintainable? OPR.....
4. Whether the petition is barred by limitation? If so, its effect? OPR.....
5. Relief.
5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

7. The petitioner has specifically alleged that initially, he had been appointed/engaged by the respondents as Dak Runner in the year, 1992 and thereafter, he was reengaged, in the year 1996, and worked as such till October, 1998 and then he was reengaged as conductor w.e.f. 19.4.1999 on the Bus on monthly salary of Rs. 2200/- per month + Rs. 50/- as daily expenses and thereafter, he was shifted to another bus.

8. On the contrary, the defence version is of total denial.

9. Petitioner while appearing in the witness box as PW-1, has supported all the relevant facts including that on 19.4.1999, he was reengaged as bus conductor in the Bus which had been hired by the respondent company for the transportation of its employees and that he worked till 31.3.2002, when his services were terminated without notice and compensation. In every calendar year, he had completed 240 days and that juniors to him, S/Shri Kamlesh, Bhagat Ram and Chaman Lal are still continuing. His Provident Fund used to be deducted from his wages i.e Rs. 2200/- per month which were being paid to him. In the cross examination, he has stated that he could not produce any document to show that he was appointed as a conductor by the respondents and that he worked as such for three years. He has no conductor licence as well as identification card issued by the respondents. The respondents do not own their buses. He denied that in the HRTC buses, the drivers and conductors are that of HRTC. He denied of not having been engaged as conductor by the respondent company which has nothing to do with him.

10. Shri Krishan Chand (PW-2), who is posted as SSA in the office of Regional PF Commissioner, has stated from the summoned record that the respondent company had been subscribing the Provident Fund of Rs. 1256+381 in the account of petitioner, since, 2001 and that it was deposited in the year, 2001 only. The company subscribes the Provident Fund of those workmen who are its employees. In the cross examination, he admitted that they deposit the PF of those workmen who are the employees of the contractors.

11. Shri Aman Kumar (PW-3) has been working as officer personnel in respondent company. According to him, he is well conversant with the facts of the case and that he has no record of this case for the reason that the same is lying with the contractor who engages labourers. In order to do particular work, they only hire contractors. In the year, 1999, they used to ply buses but the crew staff used to be provided by the contractor. Still, they ply buses, of which some are of HRTC and some private. He has no record in his possession which could go to show that in the year, 1999, who was the contractor. He could not say whether Shri Amar Dev (petitioner) was engaged as conductor in 1999 in the Bus. In the cross examination, he stated that there was only one PF code allotted to Gujrat Ambuja Cement till 2002 and thereafter the PF code is being allotted in the name of the contractor.

12. Shri Sunil Sharma (RW-1), who is the General Attorney of the respondent company, as per General Power of Attorney, Ex. RB, has filed his affidavit Ex. RA by way of his examination in chief wherein, he has supported all the material particulars, on oath. In the cross examination, he stated that the respondent company has no record, at present, in its possession to show as to who was the contractor to whom the work in question had been given in which the petitioner had been allegedly engaged. He admitted that when a worker is engaged by a contractor for doing work

for the company, his wages are required to be paid in the presence of the representative of the company. The record pertaining to the wages, paid to the petitioner, by the contractor, is not available with the respondent company. He further admitted that if the contractor fails to pay the wages, the same are required to be paid by the respondent company, regarding which, he had not brought the record. He denied that in the year, 1992, the petitioner was working in the company as Dak Runner and that in the year, 1998, he was reengaged. He admitted that PF of the petitioner had been deducted but expressed his lack of knowledge that in the year, 1999, when the petitioner was engaged, as conductor, his salary was fixed at Rs. 2200/- per month+ Rs. 50/- as expenses.

13. Shri Krishan Chand (RW-2) has stated from the summoned record that the **code** of the employees of respondent company is HP 11992 and **sub code** is HP 11992-A. As per the aforesaid code, the PF of the employees of the company is deducted and as per sub code, the PF of the employees of the contractor. In the sub code, the address of the establishment is C/o Gujrat Ambuja Cement Ltd. and in the code, the address is Gujrat Ambuja Cement Ltd. As per the record, the PF of the petitioner was deposited in the aforesaid sub code which stood closed w.e.f. 1.11.2001 because the contractors were allotted separate codes. In the cross examination, he admitted that the PF of the petitioner has not been deducted at the instance of the contractor and that both the aforesaid codes, pertain to Gujrat Ambuja Cement Ltd and its employees.

14. The petitioner has not brought, any such document, on record, which could go to show that in the year, 1999 (19.4.1999), he was engaged/appointed as conductor on the Bus (HP-07-3680), on a fixed salary of Rs. 2200 per month + Rs. 50/- as daily expenses. In his statement (PW-1), it has also come that he has no licence of conductor and further that he has no identification card issued by the respondent company. At this stage, I would like to observe that had the petitioner been appointed/engaged as conductor on the aforesaid Bus w.e.f. 19.4.1999, he could have proved this fact by examining its driver. The contention of the petitioner is also to this effect that after some time, he was shifted to another bus, as conductor, but in order to prove this fact, he has also not examined the driver of such bus, on which he had remained as conductor. The respondents have categorically denied that the petitioner had either been engaged as Dak Runner or conductor by the respondent company at any point of time. It is further to be noted that the petitioner has not brought, on record, any such document which could go to show that he had been paid salary/wages by the respondent company. In case, he had been engaged by the respondent company, he could have taken requisite steps for getting produced the record pertaining to the payment of his salary/wages from the respondent company. The defence plea is to this effect that the petitioner might have been engaged/appointed as conductor by the contractor who in the year, 1999 was having the contract to ply buses for the transportation of the staff of the respondent company. At this stage, I may also point out that since the petitioner has failed to bring, on record, any such document, which could go to show that he had been engaged/appointed as conductor by the respondent company, the defence version that he might have been engaged, as conductor, by the contractor, appears to be quite probable. This probability further gets to strengthened when this fact is considered that from the salary of the petitioner, PF etc. were being deducted.

15. By examining Shri Krishan Chand (PW-2), the petitioner has proved this fact that the respondent company had been subscribing the PF of Rs. 1256+381 in his account since, 2001 and that the company subscribes to the PF of those workmen who are its employees. In his statement, before this Court, as PW-1, he has also stated that PF used to be deducted from his wages. Now, when the evidence led by the petitioner, is read and considered in the face of the deposition made by Shri Krishan Chand (RW-2), it is highlighted that the respondent company has PF **code HP 11992** in respect of its employees and **sub code HP 11992-A**, in respect of the PF, being deducted from the employees of its contractors. He further made it clear that in the sub code, the address of the establishment is C/o Gujrat Ambuja Cement Ltd. and in the code it is Gujrat Ambuja Cement Ltd. As per record, the PF of the petitioner was being deposited in the aforesaid **sub code** which stood closed w.e.f. 1.11.2001. Shri Krishan Chand (PW-2) has admitted that they used to deposit the PF of those workmen, who had been the employees of the contractors. Thus, from the evidence which has come on record, it is quite clear that the PF of the petitioner was being deposited in **sub code HP 11992-A** which pertained to the contractor (s) having its address C/o Gujrat Ambuja Cement Ltd. This sub code cannot be said to be that of the respondent company (Gujrat Ambuja Cement Ltd.) which has its own code, HP 11992. Thus, from the statement of petitioner (PW-1) that his PF was being deducted from his salary, it has not been proved that the same was being deducted from his salary, being the employee of the respondent company, which has its separate code i.e HP 11992 for the deduction of the PF of its employees. I may reiterate that the best evidence which the petitioner could have produced before this Court was his appointment letter as conductor and the record pertaining to the payment of his wages by the respondent company. Since, the petitioner has failed to prove that w.e.f. 19.4.1999, he had been engaged/appointed as conductor, on the Bus by the respondent company, his allegation that his services were illegally terminated on 31.3.2002, by the respondents, in contravention of the provisions of the Act, is not tenable. Against this backdrop, it is held that the petitioner has failed to prove this issue to which my answer is in "No".

Issue no. 2

16. In view of my findings on issue no.1, above, this issue becomes redundant.

Issue no. 3

17. When regard is given to the allegations made by the petitioner, particularly that he had been engaged as conductor by the respondents and that his services were illegally terminated, I am of the view that on the basis of

such allegations, he has locus standi to file/maintain this petition. Moreover, it could not be explained, on behalf of the respondents, as to how the petitioner has no locus standi to maintain this petition. Thus, by holding that he has locus standi to maintain this petition, my answer to this issue is in "No".

Issue no. 4

18. It could not be explained by the respondents as to why this petition is barred by limitation. There lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing-cumprocessing Service Society Limited and Another* have held as under:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

19. Consequently, in view of law laid down by Apex Court, I hold that this petition is not barred by limitation, to which my answer is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 10th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 36 of 2006
Instituted on 18.3.2006.
Decided on. 4.8.2010.

1. Baldev Sharma House no. 1263, Kamla Nagar, Kalka, District Panchkula, Haryana.
2. Suresh Kumar Prashar House no. 108, Parer Mohalla, Kalka, District Panchkula, Haryana.

Petitioners.

VS.

The Area Manager, Bata India, Ltd., Bata Wholesale Depot, Plot No. 25, Section-1, Parwanoo, District Solan, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.L Bhardwaj, Advocate.
For respondent: Shri Naresh Gupta, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

"Whether the transfers of Shri Baldev Sharma workman and transfers of Shri Suresh Kumar Prashar workman from wholesale Depot., Bata India Ltd., Plot No 25, Sector-1 Parwanoo, District Solan, HP to Tamil Naidoo and further non payment of wages to the aforesaid workmen contrary to the orders dated 5.8.2005 passed by the Hon'ble Civil Judge (Senior Division), Kasauli, District Solan, HP and against the rule no. 2-A page 22 of Standing Orders and Rules Depot employees of Bata India Ltd. Calcutta is proper

and justified? If not, for what relief of service benefits and compensation the above aggrieved workmen are entitled to?"

2. Consequent upon the receipt of the above noted reference having been made to this Court, both the petitioners viz. Baldev Sharma (hereinafter referred as petitioner no.1) and Suresh Kumar Prashar (hereinafter referred as petitioner no.2), have filed separate statement of claims. Briefly stated facts of their respective claims are as under: Whereas, petitioner no.1 was employed as sales assistant by the respondent in the year, 1974, petitioner no.2 was employed as packer in the year, 1979. Since, 1990, both of them have been working at Parwanoo, wholesale depot and discharging their duties to the satisfaction of the respondent. It is alleged that vide order dated 22.11.2004, petitioner no.1 was transferred from wholesale depot. Parwanoo to Channai depot. and petitioner no. 2 to Kochhi depot. in state of Kerla. Having felt aggrieved by their such transfers from Parwanoo depot. they made representation dated 30.11.2004, to the officer of the respondent, at Gurgaon, for cancellation their transfers especially in view of the Standing Orders and Rules for depot. employees whereby a employee could not have been transferred from one state to another against his will and consent. Since, no action was taken by the respondent or its officials, they had no other alternative but to have raise a demand notice dated 14.9.2005, which was addressed to Labour Inspector and copy thereof to the Area Sales Manager, Parwanoo. Since, their dispute could not be reconciled, they filed Civil Suits before the Civil Judge (Junior Division), Kasauli, who restrained the respondent from implementing their transfer order dated 22.11.2004.

The appeal, which had been filed against the order of the Ld. Civil Judge, Kasauli, had been dismissed by the District & Sessions Judge, Solan. Despite the stay order, the respondent did not obey the same and for this reason, they (petitioners) had to file applications under order 39 Rule 3-A CPC, which is still pending for adjudication. Since, the Labour Inspector had referred the dispute to Labour Commissioner, the reference was made to this Court. It has been further specifically averred that since, the transfer order dated 22.11.2004, had been passed/made against the Rules framed by the respondent against their will and consent, the same is liable to be quashed and set aside being contrary to the Standing Orders and Rules for depot. employees. Further, the petitioners are also entitled to be paid wages/salary w.e.f. 31.10.2004 alongwith interest.

3. By filing separate replies, the respondent has contested the claim of the petitioners, on having raised preliminary objections including maintainability, limitation, estoppel and that it is the sole prerogative of the employer to post their employees wherever their services are best suited. On merits, it has been asserted that as per the policy of the respondent company, the employees are not transferred to one State of another but in the instant case, due to Administrative reasons, the company decided to close down the Parwanoo depot. where the petitioners were employed. In these circumstances, the respondent had the option either to retrench the services of the petitioners or to transfer them to some other wholesale depot. Taking into consideration, the interest of the employees, working at Parwanoo depot., the respondent decided to transfer the permanent employees to other depot. of the company, all over India. Under such circumstances, the petitioners had been ordered to be transferred out of State. It has further been asserted that the petitioners are not entitled to any salary or consequential benefits, on the contrary, they are liable for disciplinary action, for having failed to perform their duties for the last more than two years and that after 22.11.2004, they have not been gainfully employed.

4. By filing rejoinders, the petitioners have reiterated their own allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were struck on 4.3.2009.

1. Whether the transfer of S/Shri Baldev Sharma and Suresh Kumar Prashar workmen from wholesale depot. Bata India Ltd. Parwanoo to Tamil Naidoo and further non payment of wages to them is contrary to the orders dated 5.8.2002 passed by the Ld. Civil Judge (Senior Division) Kasauli, District Solan and against the Rule 2-A page 22 of Standing Orders and Rules of Depot. employees of Bata India Ltd. Calcutta is improper and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits and compensation, the petitioners are entitled to?

OPP.....

3. Whether the claim is neither tenable nor maintainable as alleged?

OPR.....

4. Whether the petitioners are estopped from filing the claim on account of their acts, deeds, conduct and acquiescence?

OPR.....

5. Whether the claim is time barred?

OPR.....

6. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Decided accordingly in favour of the petitioners.
Issue no.2	Entitled to reinstatement with seniority and continuity alongwith back wages @ 50%.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.
Relief.	Reference answered in favour of the petitioners, per operative part of award.

Reasons for findings

Issue no. 1

8. The petitioners have alleged their transfer as per order dated 22.11.2004 to be improper and unjustified for the reason that the same are against the relevant provisions of Standing Orders and Rules for depot employees.

9. On the contrary, the defence plea is that since, the Parwanoo depot. where the petitioners had been posted, had to be closed down, for administrative reasons, for this reason, as decided by the respondent company, the transfers of the petitioners were ordered instead of terminating their services.

10. Petitioner No.1, Shri Baldev Sharma (PW-1) while appearing in the witness box has supported all the material facts, on oath, including that vide order dated 22.11.2004, the copy of which is Ex. P-1, he was shifted/transferred to Channai and that vide Ex. P-2, he had made a representation for reconsideration of his transfer order. He further made it clear that as per the Standing Orders of the company, the employees cannot be transferred from one State of another without his consent and that the copy of clause 20 is Ex. P-3. After 30.11.2004, he was not permitted to do any work at Parwanoo. In the cross examination, he admitted that Bata depot., at Parwanoo was closed in the year, 2007 but denied that no consent is required to be taken by the respondent management at the time of transferring a workman from one State to another. He admitted of not having joined at the place of his transfer.

11. Petitioner Shri Suresh Kumar (PW-2), also supported his case on all materials particulars including that vide order dated 22.11.2004, the copy of which is Ex. P-4, he had been transferred to Kerla and vide Ex. P-2, he made representation for reconsideration of the transfer order. Ex. P-3, is the copy of clause 20 of the Standing Orders as per which, an employee cannot be transferred from one State to another without his consent. In the cross examination, he admitted that Bata depot. was closed in the year, 2007 and that he did not join at the place of his transfer.

12. Before, I proceed further, I may make it clear that the evidence of the respondent was closed as per order dated 16.6.2010, for the detailed reasons narrated therein.

13. It is not a disputed fact that vide orders dated 22.11.2004, the copies of which are Ex. P-1 and Ex. P-4, the petitioners had been transferred from Parwanoo depot. to Channai depot. (petitioner no.1) and Kochikora depot. (petitioner no.2). This clearly goes to show that their transfers had been ordered from one State of another. Ex. P-3, is the copy of clause 20 of the Standing Orders and Rules for depot. employees and it reads as under:

“Services of the employees will be transferable as and when required by the company. In case of such transfer, the employees concerned will receive sufficient and reasonable notice (of not less than 14 days) for such transfer excepting, however, in case of emergency or temporary transfer and/or transfer in the same town and will be eligible to the expenses of transfer for himself and if married, his wife and dependent minor children residing with him as per clause 13 B, as well as Rickshaw carriage or Tonga hire from residence to and from the nearest Railway/Steamer station and reasonable luggage charges. The employees concerned will be paid on demand 50% of the traveling expenses, which he is likely to incur on such transfer. The policy of the company, however, is not to transfer an employee from one state to another against his will or consent.

13. The perusal of the aforesaid clause goes to show that as per the policy of the company, an employee is not to be transferred from one State to another against his will or consent. In the instant case, the main ground, which

has been taken by the respondent, in its reply, to transfer the petitioners from Parwanoo depot., the same had to be closed down for administrative reasons and that instead of terminating the services of the petitioners, as per the decision taken by the respondent company, the permanent employees posted at Parwanoo depot. were ordered to be transferred on humanitarian grounds. Now, when regard is given to the suggestions which were put to Baldev Sharma (PW-1) & Suresh Kumar (PW-2), on behalf of the respondent company, it is abundantly clear that they were suggested that the Bata depot. was closed down in the year, 2007. From this suggestion, it is clear that as per the respondent company, the Parwanoo depot. had been closed in the year, 2007 and not on the date i.e 22.11.2004 when the petitioners were transferred. I may also like to point out that no record has been brought by the respondent which could go to show that on the date i.e 22.11.2004, when the petitioners were transferred, its Parwanoo depot. had closed down. In the statements of the petitioners (PW-1 & PW-2) it has come that after 30.11.2004, they were not permitted to work at Parwanoo depot. Their such version has gone unchallenged/un-impeached. Had, Parwanoo depot. been closed on 22.11.2004, when the petitioners were ordered to be transferred, there was no occasion for the petitioners to have stated that after 30.11.2004, they had not been allowed to work, at Parwanoo. When, on the record, it stands proved that on 22.11.2004, the date on which the petitioners were transferred from Parwanoo depot. was in existence/functioning, the plea of the respondent that the petitioners had to be transferred on humanitarian grounds, instead of terminating their services, is not tenable. As, the respondent company was required to take the consent/willingness of the petitioners before transferring them out of State as per clause 20 of the Standing Orders, their transfer order vide Ex. P-1 & Ex. P-4 (dated 22.11.2004) has been in contravention of the provisions of said Standing Orders. It is to be mentioned that it is not the plea of the respondent that the petitioners had given their consent to be transferred to the place where they were transferred. Thus, I have no hesitation in holding that since, the petitioners had been ordered to be transferred in contravention of the aforesaid Standing Orders, their transfer orders dated 22.11.2004 (Ex. P-1 & Ex. P-4) are improper and unjustified. Consequently, this issue stands answered in "Yes" accordingly.

Issue no. 2

14. Both the petitioners have stated that after their transfer, they have not been gainfully employed. While appearing in the witness box as PW-1, the petitioner no.1 has specifically stated that he is not doing anything. In the statement of PW-2(petitioner no.2), it has come that he is looking after agricultural work at his village. From the evidence, which has been led by the petitioners, it appears that after their transfer, they have not been gainfully employed. Since, their transfer vide orders dated 22.11.2004 has been held by me as improper and unjustified and that by feeling aggrieved by the same, the petitioners had raised an industrial dispute, I am of the view that they deserves to be granted back wages. However, taking into consideration, all the facts and circumstances, I am of the view that it will be quite justified if they are awarded back wages @ 50% from the date of their transfer till their reinstatement. They are also entitled for seniority and continuity in service. Accordingly, my answer to this issue is in "Yes".

Issue no. 3

15. It is not understandable as to why the claim of the petitioners is not tenable or maintainable. Apart from it, the learned counsel for respondent could not explain as to why the claims are not maintainable. Moreover, no evidence has been led by the respondent in order to prove that the petitioners are not workmen. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

Issue no. 4

16. To prove this issue, the respondent has not led any evidence. For its failure to lead evidence, this issue remains unproved. Thus, my answer to this issue is in "No".

Issue no. 5

17. It could not be explained by the respondent as to why this petition is time barred. There lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing-cum-processing Service Society Limited and Another* have held as under: ***"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

Consequently, in view of law laid down by Apex Court, I hold that this petition is not time barred, to which my answer is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claims of the petitioners are allowed and their transfer as per order dated 22.11.2004, is cancelled and set aside. The respondent is directed to re-consider their transfer from

Parwanoo depot, which now stands closed, strictly in accordance with the Standing Orders/Rules and if possible, they be adjusted/transferred to the nearest depot. from Parwanoo. Besides it, it is also ordered that they (petitioners) be reinstated in service with seniority and continuity alongwith back wages @ 50%. Consequently, the reference stands answered in favour of the petitioners and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 4th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA, CAMP AT NAHAN.

Ref no. 40 of 2001.
Instituted on 21.3.2001.
Decided on 25.11.2009.

1. Harish Chander Chauhan S/o Shri Devi Ram, Senior Assistant.
 2. R.S Soni S/o Shri H.R Soni, Senior Assistant.
 3. Madan Mohan Sharma S/o Shri Jagat Ram, Senior Assistant.
 4. Sumer Chand S/o Shri Hirda Ram, Junior Assistant.
 5. Bhagat Ram S/o Shri Suraj Lal, Junior Assistant.
 6. Vir Narayan Singh, S/o Shri Jagdarshan Singh, Junior Assistant.
 7. Rita Anand W/o Shri Virender Kumar Anand, Junior Assistant.
 8. Pushpa Gupta, W/o Shri Raj Kumar, Junior Assistant.
 9. Vijay Kumar S/o Shri D.N Sharma, Junior Assistant.
 10. Santosh Sharma D/o Shri Manohar Lal, Junior Assistant.
 11. Asim Ali S/o Shri Rehmat Ali, Junior Assistant.
 12. Mani Ram S/o Shri Shree Chand, Junior Assistant.
 13. Chaman Lal s/o Shri Tulsi Ram, Junior Assistant.
 14. Raghubar Dutt S/o Shri Urbi Dutt, Junior Assistant.
 15. Ram Kumar S/o Shri Sita Ram, Junior Assistant.
 16. Shyam Lal S/o Shri Niranjana Dass, Junior Assistant.
 17. Harinder Mohan S/o Shri Jagat Ram, Junior Assistant.
 18. Bhagat Singh S/o Shri Dhan Singh, Junior Assistant.
 19. Surinder Mohan S/o Shri Pyare Lal, Senior Clerk.
 20. R.K Chaurasia S/o Shri Babu Ram, Senior Clerk.
 21. Roop Chand S/o Shri Bhagwan Singh, Senior Clerk.
 22. Tej Paul, S/o Shri Prabhu Ram, Senior Clerk.
 23. Abdul Sitar S/o Shri Bashir Ahmed, Senior Clerk.
 24. Ramesh Kumar, S/o Shri Ruder Dutt, Senior Clerk.
 25. Yatinder Kumar Sharma, S/o Shri Sushil Kumar Sharma, Senior Clerk.
 26. Subhash Chand, S/o Shri Samay Singh, Senior Clerk.
 27. Inder Singh S/o Shri Durga Singh, Pharmacist.
 28. Shakti Saran S/o Shri Gurcharan Dass, Senior Steno grade-1.
 29. Rajinder Singh, S/o Shri Kanwar Singh, Daftri.
 30. Rajkumar S/o Shri Babu Ram, Peon.
 31. Kaushlya Aggrwal W/o Shri Mam Raj, Peon.
 32. Anita Devi D/o Shri Neter Singh, Peon.
- All through General Secretary, HPPWD & IPH State Workshop Nahan Foundry), Ministerial Staff Union, Nahan, HP.

Petitioners.

Vs.

1. The Superintending Engineer, (Mechanical) HP PWD & IPH State Workshop (Nahan Foundry) Nahan, HP.
2. The Executive Engineer, (Mechanical) HP PWD & IPH State Workshop (Nahan Foundry) Nahan, HP.

Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Ld. Csl.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether Shri Harish Chand & 31 other employees of HPPWD & IPH Sate Workshop (Nahan Foundry) Nahan, HP are entitled for promotion w.e.f. 1.10.1988 as alleged? If so, what relief and consequential service benefits employees are entitled for?”

2. The petitioners have filed a statement of claim asserting therein that the petitioners are workmen as per the provisions of the Industrial Disputes Act, 1947, who were the employees of the Nahan Foundry prior to 1st October, 1988 whose services were taken over alongwith the other employees of Nahan Foundry, Nahan w.e.f. 1.10.1988 on the various terms and conditions and one of the term was that the petitioners seniority would be integrated with their counter parts in HPPWD and IPH Department for the purpose of seniority and promotion but the management backed out of its promise and also violated the terms and conditions and treated the cadre of the petitioners separately vide order dated 25th August, 1995 and the decision was taken unitarily and no notice was given by the management for separating the cadre and as such the management violated the principle of natural justice and even if it is assumed that the management was competent to separate the cadre of the petitioners then also the petitioners are entitled to the promotion as per the R & P Regulations of H.P Government and that in Nahan Foundry, Nahan the petitioners were having the regular promotion channel and they were always promoted to the various grades starting from clerical to superintendent but after the take over, the future of the petitioners has become totally bleak since no promotion has been affected w.e.f. 1.10.1988. The petitioners have met the concerned authorities but to no avail and even if the cadre of the petitioners has become treated separately then also the management is bound to give promotion to the petitioners w.e.f. 1.10.1988 as per the recommendations made by the Executive Engineer vide letter dated 20th October, 1997 and that a meeting was held on 25th August, 1999 under the chairmanship of Commissioner-cum-Secretary (PWD) in which the representatives of both sides participated but later on the same was superseded on 4th Jan. 2000 under the garb of clause 8 of the terms and conditions of take over which declares the cadre of the employees as dying and that the petitioners have been meted out hostile discrimination also by the management as the cadre of the taken over employees is dying then how cases of Mr. S.D Chopra and J.K Gupta have been promoted to the next higher post because their services were also taken over alongwith other employees of the Nahan Foundry, Nahan by the PWD/IPH Departments w.e.f. 1.10.1988 and the same set of terms and conditions apply to the said persons and as such the management has violated the article 14 of the Constitution of India and even Shri S.P Jerath, Laboratory Analyst has been given the benefits of six advance increments vide order dated 25th November, 1999 in lieu of promotion which fact clearly established that the management not only violated the articles 14 and 16 of the Constitution of India but also indulged into unfair labour practice as per schedule 5th of the Industrial Disputes Act, 1947 and as such prayed for promotions to their respective grades w.e.f. 2.10.1988 as per the recommendation made by the concerned authorities with all benefits incidental thereof such as seniority and arrears, hence this claim.

3. The respondents resisted and contested the claim of the petitioners which filed reply inter alia raising preliminary objection that all the petitioners initially served with the Nahan Foundry Ltd. Nahan which was later on converted into HPPWD/IPH workshop Nahan w.e.f. 1.10.1988 and the services of all the petitioners alongwith other employees were taken over by the said workshop vide office order & notification dated 28.9.1988, 16.1.1989 and 21.1.1989 respectively issued by the HP Government under the terms and conditions described in the order dated 23/27.12.1989 issued by the Commissioner-cum-Secretary PWD/IPH to the government of Himachal Pradesh and that according to the condition no.2 of order dated 23/27.12.1989 all the petitioners opted for the corresponding pay scale of Himachal Pradesh government w.e.f. 1.10.1988 and that all the petitioners are working on various categories of posts as per detail annexure R/37 and since 1.10.1988, the petitioners did not raise any objection qua their pay scale/promotion, hence the claim is hopelessly time barred and that the petitioners had neither referred the matter in accordance with the law to the Labour Commissioner nor any award has been passed by this Court and that the subject matter raised by the petitioners by way of claim petition before this Court is not maintainable as this Court has no jurisdiction to entertain and decide such matter with relates to the provision of R&P Rules and that Shri Harish Chandra, Senior Assistant was absorbed as Junior Clerk in regular pay scale of Rs. 55-130/- w.e.f. 1.6.1961 vide office order dated 30.5.1961 by the management of erstwhile Nahan Foundry Ltd. Nahan, who was further promoted to the post of Senior Clerk then to the post of Assistant vide office order dated 14.2.1976 and 25.2.1982 and after conversion of Nahan Foundry, Nahan into PWD/IPH Workshop, he has opted the corresponding pay scale of HP State Government, who also filed an application before the Administrative Tribunal requesting therein for officiating allowances for higher post w.e.f. 1.7.1990 on the basis of office order dated 21.1.1993 and as such the subject matter of the case before the Administrative Tribunal is

entirely different then the case filed before this Court, hence the claim is not maintainable and that Shri R.S Soni was absorbed by the management of erstwhile Nahan Foundry Ltd. Nahan in the regular pay scale of Rs. 110-180 as junior grade clerk vide office order dated 9.9.1965, who was promoted to the post of senior clerk in the pay scale of Rs. 330-560 w.e.f. 1.5.1979 vide office order dated 1.4.1979, who was further promoted as Inspector vide office order dated 10.11.1987 and after conversion of Nahan Foundry into PWD/IPH workshop, who opted the pay scale of HP Government and designated as Senior Assistant and now he has been retired from service w.e.f. 31.7.2001 after getting two promotions in his service career and that Shri Madan Mohan Sharma was appointed as Junior Clerk in the pay scale of Rs. 110-180 w.e.f. 19.6.1962 vide office order dated 10.6.1962, who was promoted as senior clerk w.e.f. 29.3.1975 in the pay scale of Rs. 330-560 vide order dated 13.2.1976 and after the conversion of Nahan Foundry, Nahan, he opted the corresponding pay scale of HP Government w.e.f. 1.10.1988, who was placed in the cadre of Junior Assistant vide order dated 27.10.1990 in the pay scale of Rs. 1500-2640 which was revised to Rs. 1500-2700 w.e.f. 1.1.1993, who was promoted as senior Assistant in the pay scale of Rs. 1800-3200 w.e.f. 1.12.1990, who was retired from service w.e.f. 30.4.2001 after getting two promotions and that Shri Sumer Chand appointed as Junior Clerk in the pay scale of Rs. 110-180 vide office order dated 2.1.1971 by the Nahan Foundry, Nahan who was promoted to Senior Clerk on 26.2.1982 in the pay scale of Rs. 330-560 and on conversion of Nahan Foundry, he opted the pay scale of HP Government, who was placed in the category of Junior Assistant in the pay scale of Rs. 1500-2640 which was revised to Rs. 1500-2700 w.e.f. 1.10.1988, who has also retired from service w.e.f. 30.9.2001 and that Shri Bhagat Ram was appointed as Clerk in the pay scale of Rs. 110-180/- w.e.f. 24.5.1967, who was promoted as senior clerk in the pay scale of Rs. 330-560 w.e.f. 1.1.1987 and on conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh government, who was placed in the category of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and that Shri Vir Narain Singh was appointed as clerk in the pay scale of Rs. 110-180/- w.e.f. 24.5.1967, who was promoted as senior clerk in the pay scale of Rs. 330-560 w.e.f. 1.1.1987 and on conversion of Nahan Foundry, he opted the pay scale of Himachal Pradesh government, who was placed in the category of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and that Smt. Rita Anand was appointed as Junior Clerk in the pay scale of Rs. 110-180/- w.e.f. 18.2.1972, who was promoted as senior clerk in the pay scale of Rs. 330-560 w.e.f. 1.1.1987 and on conversion of Nahan Foundry, Nahan, she opted the pay scale of Himachal Pradesh government, who was placed in the category of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and that Smt. Pushpa Gupta was appointed as Clerk in the pay scale of Rs. 110-180/- w.e.f. 22.2.1972, who was promoted as senior clerk in the pay scale of Rs. 330-560 w.e.f. 1.1.1987 and on conversion of Nahan Foundry, Nahan, she opted the pay scale of Himachal Pradesh government, who was placed in the category of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and that Shri Vijay Kumar was appointed as Branch Incharge in the pay scale of Rs. 110/- w.e.f. 3.11.1969, who was promoted as Junior clerk in the pay scale of Rs. 260-400 w.e.f. 1.6.1974, who was promoted as senior Clerk in the pay scale of Rs. 1200-2040 w.e.f. 10.11.1987 and on the conversion of Nahan Foundry, he opted the pay scale of Himachal Pradesh government, who was placed in the category of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and Shri Shyam Lal Sodha was appointed as unskilled worker in the pay scale of Rs. 196-232 w.e.f. 22.2.1975 and observed as junior clerk in the pay scale of Rs. 260-400 w.e.f. 12.7.1976 and after conversion, he opted the pay scale of HP Government, who was placed in the cadre of Senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/- and further he was given placement in the cadre of junior Assistant in the pay scale of Rs. 1500-2640 w.e.f. 1.10.1988 vide order dated 6.11.1996 and that Shri Harinder Mohan was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 14.10.1979 and on the conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh government, who was placed in the category of senior Clerk w.e.f. 1.10.1988 and further he was given placement in the cadre of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and that Shri Bhagat Singh was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 14.10.1979 and on the conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh government, who was placed in the category of senior Clerk w.e.f. 1.10.1988 and further he was given placement in the cadre of Junior Assistant in the pay scale of Rs. 1500-2640/- which was revised to Rs. 1500-2700/- and that Shri R.K Chaurasia was appointed as sub Branch Incharge on fixed salary of Rs. 252/- w.e.f. 1.6.1974, who was observed as junior clerk and after conversion, he opted the pay sale of HP Government, who was placed in the category of Senior Clerk w.e.f. 1.10.1988 and that Shri Surinder Mohan was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 17.9.1980 and after completing three years service, he was absorbed as regular clerk and on the conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh government, who was placed in the category of senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/- and that Shri Roop Chand was appointed as Clerk in the pay scale of Rs. 260-400/- w.e.f. 10.4.1984 and on the conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh government, who was placed in the category of senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/- and that Shri Tej Paul was appointed as Clerk in the pay scale of Rs. 260-400/- w.e.f. 1.4.1984 and on the conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh government, who was placed in the category of senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/- and that Shri Abdul Sitar was absorbed as peon after completing three years service as casual worker w.e.f. 4.7.1980 in the pay scale of Rs. 196-232 and regularized in the pay scale of Rs. 210-290/- w.e.f. 1.4.1984, who was promoted as junior clerk in the pay scale of Rs. 260-400 w.e.f. 1.1.1987 and on the conversion of Nahan Foundry, Nahan, he opted the pay scale of Himachal Pradesh

government, who was placed in the category of senior Clerk w.e.f. 1.1.1992 in the pay scale of Rs. 1200-2100/- and that Shri Ramesh Kumar was appointed as sub Branch Incharge on fixed salary of Rs. 232/- w.e.f. 29.4.1976, who was promoted as Branch Incharge on fixed salary of Rs. 260/- w.e.f. 1.1.1987 and after conversion, he was redesignated as clerk w.e.f. 1.10.1988 in the pay scale of Rs. 950-1800, who was further placed in the category of senior clerk in the pay scale of Rs. 1200-2100 w.e.f. 1.10.1993 and that Shri Yatinder Kumar was appointed as Branch Incharge on fixed salary of Rs. 232/- w.e.f. 9.1.1980 and after conversion, he was redesignated as clerk w.e.f. 1.10.1988 in the pay scale of Rs. 950-1800, who was further placed in the category of senior clerk in the pay scale of Rs. 1200-2130 w.e.f. 1.10.1993 and that Shri Subhash Chand was appointed as sub Branch Incharge on fixed salary of Rs. 232/- w.e.f. 10.9.1982, who was promoted as Branch Incharge on fixed salary of Rs. 260/- w.e.f. 1.1.1987 and after conversion, he was re-designated as clerk w.e.f. 1.10.1988 in the pay scale of Rs. 950-1800, who was further placed in the category of senior clerk in the pay scale of Rs. 1200-2100 w.e.f. 1.10.1993 and that Shri Inder Singh was appointed as Compounder in the pay scale of Rs. 130-240/- w.e.f. 29.3.1967, who was further promoted as compounder in the pay scale of Rs. 425-640 w.e.f. 1.1.1987 and after conversion, he was redesignated as Pharmacist in the pay scale of Rs. 1400-2300 w.e.f. 1.10.1988 and that Shri Shakti Saran was initially appointed as senior Clerk in the pay scale of Rs. 260-400 w.e.f. 1.2.1976, who was promoted as junior stenographer from typist vide order dated 30.7.1987 and after conversion, he was redesignated as junior scale stenographer grade-1 in the pay scale of Rs. 1500-2640/- and that Shri Rajinder Singh was appointed as Peon in the pay scale of Rs. 196-232 w.e.f. 4.7.1980, who was promoted as store packer in the pay scale of Rs. 800-1150 w.e.f. 1.1.1987 and after conversion he was designated as Daftri in the pay scale of Rs. 810-1440/- and that Smt. Santosh Sharma was absorbed as regular typist in the pay scale of Rs. 260-400 w.e.f. 1.3.1975 and after conversion, she was placed in the cadre of Senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100 and she was given further placement in the cadre of Junior Assistant in the pay scale of Rs. 1500-2640/- w.e.f. 1.10.1989 which was revised to Rs. 1500-2700 w.e.f. 1.10.1988 and that Shri Raghuvir Dutt was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 1.2.1976 and after conversion of Nahan Foundry into PWD/IPH workshop, he opted the scale of State Government, who was placed in the cadre of Senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/-, who was further given placement in the cadre of junior Assistant in the pay scale of Rs. 1500-2640 which was revised to Rs. 1500-2700/- and that Shri Mani Ram was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 1.2.1976 and after conversion of Nahan Foundry into PWD/IPH workshop, he opted the scale of State Government, who was placed in the cadre of Senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/-, who was further given placement in the cadre of junior Assistant in the pay scale of Rs. 1500-2640 which was revised to Rs. 1500-2700/- and that Shri Chaman Lal Gupta was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 1.2.1976 and after conversion of Nahan Foundry into PWD/IPH workshop, he opted the scale of State Government, who was placed in the cadre of Senior Clerk w.e.f. 1.10.1988 in the pay scale of Rs. 1200-2100/-, who was further given placement in the cadre of junior Assistant in the pay scale of Rs. 1500-2640 which was revised to Rs. 1500-2700/- and that Shri Asim Ali was appointed as Junior Clerk in the pay scale of Rs. 110-180/- w.e.f. 31.7.1972, who was promoted as senior Clerk in the pay scale of Rs. 330-560 and after conversion of Nahan Foundry into PWD/IPH workshop, he opted the scale of State Government, who was given placement in the cadre of junior Assistant in the pay scale of Rs. 1500-2640 which was revised to Rs. 1500-2700/- and that Shri Ram Kumar Gupta-II was appointed as semi skilled worker w.e.f. 1.6.1967, who was promoted as skilled worker w.e.f. 1.7.1973, who was further appointed as junior clerk in the pay scale of Rs. 260-400 and was appointed as Junior Clerk in the pay scale of Rs. 260-400/- w.e.f. 1.2.1976 and after conversion of Nahan Foundry into PWD/IPH workshop, he opted the scale of State Government, who was given placement in the cadre of junior Assistant in the pay scale of Rs. 1500-2700/- and that Shri Raj Kumar was appointed as peon in the pay scale of Rs. 196-232 w.e.f. 1.4.1984 and after conversion of Nahan Foundry into PWD/IPH workshop, he opted the scale of State Government, who was placed in the cadre of helper in the pay scale of Rs. 750-1350/- and that Smt. Kaushalya Aggarwal was appointed as peon in the pay scale of Rs. 196-232 w.e.f. 10.7.1988 on compassionate grounds and after conversion, she was designated as peon in the pay scale of Rs. 750-1350/-, who was retired from service on medical grounds and that Miss Anita Devi was appointed as Peon in the pay scale of Rs. 750-1350 w.e.f. 13.2.1988 on compassionate ground and after conversion, she was designated as peon in the pay scale of Rs. 750-1350/- On merits, it is contended that the employees of Nahan Foundry Ltd. were transferred to HPPWD/IPH State Workshop Nahan w.e.f. 1.10.1988 under the administrative control of Secretary PWD which were treated as a separate entity vide order dated 25.8.1995 and the matter regarding promotion of the employees was taken up with the government in innumerable times but nothing fruitful could be achieved in view of the terms and conditions issued by the government and that the employees including the petitioners were given due promotions as per R&P Rules but after the conversion of Nahan Foundry into PWD/IPH workshop w.e.f. 1.10.1988, the services of employees were taken over by the state government but could not be given promotion on account of hinderance of clause no. 8 and that the services of Shri S.C Chopra and Shri J.K Gupta were taken in the state workshop on the same set of prescribed terms and conditions of HP government, who were promoted to the post of Superintending Engineer and Executive Engineer respectively by the order of Secretary PWD to the government of Himachal Pradesh. It is also admitted that Shri S.P Jerath was given six advance increments to compensate his salary and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioners controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 16.12.2004 on the pleadings of the parties.
1. Whether the petitioners are entitled to promotions w.e.f 1.10.1988 as alleged? OPP.....
2. Whether the claim is not legally maintainable as alleged in preliminary objection no.3? OPR.....
3. Whether the petition is not maintainable in the present form? OPR.....
4. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:
- | | |
|-------------|--|
| Issue no.1 | Yes. |
| Issue no.2. | Not proved. |
| Issue no.3. | Not proved. |
| Relief. | Reference answered in affirmative per operative part of award. |

Reasons for findings

Issues no. 1

8. Coming to issue no.1, the petitioners have examined Shri Chaman Lal Gupta, General Secretary, HPPWD/IPH State Workshop Nahan, as PW1, who has stated that the petitioners are covered under the Industrial Establishment of HPPWD & IPH State Workshop by virtue of Industry and also fall in the category of workmen. They have filed the case for promotion of the petitioners w.e.f. 1.10.1988 against vacant posts as has been agreed to vide letter dated 21.11.1998 Ex. PA. The services of the petitioners were taken over by the State Government w.e.f. 1.10.1988 under the prescribed terms and conditions of letter dated 23/27.12.1989 vide Ex. PB in which the petitioners are entitled for promotion vide clause 4 (2) of Ex. PB and the Court has already awarded the promotion to the worker category incase Karora Singh & other, who are the employees of the same organization. The union of the petitioner is duly registered with the Registrar Trade Union, HP government vide certificate Ex. PC and Shri S.C Chopra and Shri J.K Gupta, Executive Engineer and Assistant Engineer respectively have been promoted to the post of Superintending Engineer and Executive Engineer respectively, who also fall within the same set of terms and conditions whereas the case of the petitioners for promotion w.e.f. 1.10.1988 against vacant posts has not been decided at all and the terms and conditions contained in Ex. PA does not bar the petitioners for promotion, hence the petitioners are entitled to promotion w.e.f. 1.10.1988 as per the scheme laid down vide Ex. PA.

9. To rebut the case of the petitioners, the respondents has examined Er. J.K Gupta, Executive Engineer HPPWD & IPH State Workshop Nahan as RW1, who has stated that Nahan Foundry Ltd. Nahan was converted into a departmental workshop of HPPWD & IPH State workshop w.e.f. 1.10.1988 under certain terms and conditions of taken over vide order dated 27.12.1989 vide which the employees were asked to exercise option and all the petitioners had opted to come over to HPPWD as per clause no.8 of the terms and conditions and it has been decided that the post of the company taken over by the government in state workshop shall cease to exist those posts having become vacant on account of retirement or any other reason vide Ex. RW1/A and the case of promotion of the employees was also examined by the department of personnel for promotion of staff on adhoc basis which was rejected vide Ex. RW1/B.

10. The case of the petitioners is that initially they were appointed in the Nahan Foundry Ltd. Nahan which was taken over by the state government under the prescribed terms and conditions w.e.f. 1.10.1988 but after conversion of Nahan Foundry into PWD/IPH workshop Nahan, they were not promoted in accordance with law, hence they are entitled to be promoted against the vacant posts.

11. On the contrary, the respondent contends that the petitioners were the employees of the Nahan Foundry Ltd. Nahan prior to its conversion into PWD/IPH Workshop Nahan, who opted the scale of state government at the time of its conversion and since it was declared as dying cadre, hence no promotion can be granted to the petitioners though it was admitted that S/Shri S.C. Chopra and J.K Gupta were promoted to their next rank and Shri S.P Jerath was given six advance increments by the respondents.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioners had worked with the Nahan Foundry Ltd. Nahan prior to its conversion into PWD/IPH State Workshop on different posts and thereafter the Nahan Foundry was taken over by the HPPWD/IPH workshop Nahan on 1.10.1988 alongwith all employees. It is also clear that prior to its conversion, the employees of the Nahan Foundry Ltd. Nahan were promoted from time to time as is evident from the reply filed by the respondents and after conversion of Nahan Foundry Ltd.

Nahan into HPPWD/IPH State Workshop, no promotions were made to the employees and therefore their cadre has become a dying cadre. The petitioners have proved on record that the respondents have discriminated with them as they promoted S/Shri S.C Chopra and J.K Gupta, Executive Engineer and Assistant Engineer respectively to the post of Superintending Engineer and Executive Engineer respectively and they also fall within the same set of terms and conditions as applicable to them. It is significant to note that there is nothing on record which could show that how the respondents allowed promotions to S/Shri S.C Chopra, J.K Gupta, S.P Jerath and one Shri Inder Singh without any basis and foundation especially when they also fall in the same dying cadre. Apart from it, there is nothing on record which could show that whether there was any exigencies of promotion of such persons and when they can be promoted why others cannot be promoted? It is significant to note that as per para 4 of letter dated 23/27.12.1989, the services of the petitioner stood integrated in the corresponding cadre. They worked in this cadre prior to 1989 onwards. The decision to have separate cadre for the employees of PWD/IPH State Workshop was taken on 26.8.1995. This decision to the contrary to the terms and conditions stipulated in office order dated 23/27.12.1989. The advantage which have accrued to the petitioners after the integration of their services with the cadre of corresponding categories of the employees of PWD/IPH have been set to naught by the respondents by issuing letter dated 26.8.1995. The petitioners had started enjoying the pay of the corresponding cadre including seniority, promotional avenues etc. It is settled law that it is the prerogative of the State Government to create, bifurcate, trifurcate of merge cadres, however, the decision must be taken in non-arbitrary and reasonable manner. As it was held in case titled **Ram Singh Vs. State of Himachal Pradesh & another in CWP(T) No.2678/2008 decided on 19.5.2009** in which it was held that :

“the conditions of the services of the petitioner have been altered unilaterally to his detriment by creating a separate cadre as per letter dated 26.8.1995. The petitioner and similar situated persons have been visited with severe civil and evil consequences. What was expected from the State Government at least was to hear the petitioner before taking the decision to create separate cadre of PWD/IPH State Workshop at Nahan. Since I have observed earlier that the respondents have changed the separate cadre of S/Shri S.C Chopra, J.K Gupta, S.P Jerath and one Shri Inder Singh by promoting them to the next rank and even Shri S.P Jerath was given six advance increments without any basis and foundations as nothing has been proved on record by the respondents in order to show as to how they are entitled to promotion to the next ranks in utter disregard of law especially when they were also placed on the same dying cadre and the petitioners being the similar situated persons in the same dying cadre are also entitled to be promoted to the next rank and they cannot be discriminated on any count especially when the others have been promoted to the next ranks without any basis and foundations. Here I am fortified with a view taken by their lordships of Hon’ble Supreme Court in case titled as State of UP and another Vs. Ram Gopal Shukla reported in 1981 (2) SLR page 3 in which it was held that:

“Constitution of India. Article 16. Promotion. Right to be considered for promotion. Eligible persons have fundamental right to be considered for promotion. Question of chance of promotion not being a condition of service does not arise”.

Their lordships have further held that:

“Constitution of India, Article 14 and 16. Uttar Pradesh Promotion by Selection in consultation with Public Service Commission (Procedure) Rules 1970 Rule &-A and 7-B. Promotion. Grouping of 300 persons in one category. Rule debarred other eligible candidates from being considered for promotion till list of 300 persons selected in 1966 for exhausted. Rule 7-A and 7-B ultra vires of Article 14 and 16”.

Thus, on the strength of above cited rulings and in view of the fact that S/Shri S.C Chopra, J.K. Gupta, Executive Engineer and Assistant Engineer respectively to the post of Superintending Engineer and Executive Engineer respectively, Shri S.P Jerath were given six advance increments on promotions and one Shri Inder Singh was promoted to the next rank and the conditions of the services of the petitioners have been altered unilaterally to their detriment by creating a separate cadre and as such the petitioners cannot be ignored from their promotions to higher ranks against vacancies and as such are entitled to promotion w.e.f. 1.10.1988 against the vacant posts in accordance with law and procedure. Accordingly, issue no.1 is decided in favour of the petitioners and against the respondents.

Issue no. 2

14. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. In view of no evidence on record, this issue is decided in negative against the respondents.

Issue no. 3

15. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with the jurisdiction of this Court which has jurisdiction to entertain and decide the subject matter of the dispute in question. Accordingly issue no.3 is decided in favour of petitioners and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioners succeeds and is hereby allowed and as such the petitioners are ordered to be promoted against the vacant posts w.e.f. 2.10.1988 as

and when their promotion is due in accordance with law and procedure as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the Official Gazette. File, after completion, be consigned to records. Announced in the open court today on this day of 26th November, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT SOLAN

Ref no. 62 of 2005.
Instituted on 5.7.2005.
Decided on. 12.8.2010.

Mathu Ram S/o Shri Rodu Ram R/o Village Mamlada, P.O Gauna Ji, Tehsil & District Solan, HP.

Petitioner.

VS.

The Executive Engineer, HPPWD (B&R) Division, By Pass, Solan, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.S Kanwar, Advocate.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Mathu Ram S/o Shri Rodu Ram ex daily wages beldar by the Executive Engineer, HPPWD (B&R) Division By Pass, Solan HP w.e.f. August, 1989 without complying the provisions of the Industrial Disputes Act, 1947 is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. In nutshell the case of the petitioner is that w.e.f. 1964 to August, 1989, he had worked regularly with the department. During this period, he had worked under various Mates namely S/Shri Bala Ram, Jagat Ram and Saran Dutt, HPPWD Division Solan and S/Shri Kulfia Ram, Jagat Ram, Kapur Singh, Roop Ram, Nathu Ram and Devi Ram, HPPWD Oachghat. Lastly, he had worked as daily wage beldar at Dharon Ki Dhar road. His conduct and work during aforesaid period had remained excellent with all respect. Despite that, to his utter surprise, his services were terminated in the month of September, 1989 without notice and compensation. He had regularly completed 240 days in each year. Although, he had visited the office of the respondent several times, after his termination but of no avail. He had also requested the XEN of the department, for his reinstatement, by explaining his position, in writing. Besides, a written representation was also made to the Deputy Commissioner, Solan. All his such efforts did not bear the desired results. Since, his services were terminated without notice and compensation, in contravention of the provision of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated, in service, alongwith all the consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been denied that the petitioner had worked regularly w.e.f. 1964 to August, 1989. As per record, he had worked as beldar w.e.f. 1.1.1987 to 31.8.1989. It is further specifically pleaded that he had abandoned the job and did not turn up in the month of September, 1989 for which month, the muster roll had been issued for fifteen persons/workers. Upon this, the petitioner was informed through Shri Devi Ram (Mate) to join his duties as some important work was under progress but despite that, he had failed to join his duties. Other allegations either specifically denied or for want of knowledge.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 12.11.2008.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. August, 1989 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?
OPP.....
2. If issue no.1 is proved, to what service benefits and amount of compensation, the petitioner is entitled to?
OPP.....
3. Whether the claim is not maintainable in the present forum?
OPR.....
4. Whether the petitioner is estopped to file the claim by his own act & conduct as alleged?
OPR.....
5. Whether the claim of the petitioner suffers from delay and latches?
OPR.....
6. Whether the department of I&PH is not an industry within the provisions of ID Act, 1947?
OPR.....
7. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.
Issue no.6	No.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. It has been specifically alleged by the petitioner that he had worked with the respondent department w.e.f. 1964 to August, 1989 and that his services were terminated in the month of September, 1989 without notice and compensation.

9. On the contrary, the defence version is that, he had not worked w.e.f. 1964. In fact, as per record, he had worked w.e.f. 1.1.1987 to 31.8.1989, when, he abandoned the job, on his own and did not join duties despite having been informed through Shri Devi Ram, Mate.

10. While appearing in the witness box as PW-1, the petitioner has stated that he had been engaged by the respondent in the year, 1970 and worked till 1989, when his services were terminated without notice and compensation. Ex. PA is the mandays chart, issued by the department. Ex. PB, is a certificate regarding his date of birth. In the cross examination, he denied of having abandoned the job, in the year, 1989. He admitted that for the months of September and October, 1989, the muster rolls had been issued for fifteen persons/workers. He denied of not having turned up to do job despite the issuance of muster rolls. He admitted that Ex. RA and Ex. RB are the muster rolls and that the beldars mentioned therein used to work with him and that in the said muster rolls, his name was not entered. He further admitted that in Ex. RA, there is entry qua his absence. He knows Devi Ram but denied that he had sent a message to him for resuming the work. Certificate Ex. PB, had been issued on the basis of his affidavit and not as per the record of Panchayat.

11. Shri Ashwani Kumar (RW-1), has stated from the record, that the petitioner had been engaged as daily wage w.e.f. 1.3.1987 and that he remained as such till 31.8.1989. In the month of August, 1989, the department had sanctioned the strength of fifteen beldars but only twelve came for work alongwith petitioner. In the month of September, 1989, only ten beldars had come for work. The petitioner, who had not come for work, was called but despite that, he did not turn up for work. In the month of October, 1989, out of fifteen beldars, nine beldars had come

for work and the petitioner again failed to turn up. Ex. PW-1/A to Ex. PW-1/C, are the copies of muster rolls. In muster roll Ex. RW-1/B, there is a note encircled 'A' to the effect that the petitioner had been called for work. Since, the petitioner had left the job, on his own, no notice was required to be sent to him and also to pay him compensation. As per the certificate, issued by Secy. Gram Panchayat Jonaji, which is Ex. RW-1/D, the date of birth of the petitioner is 1949. In the cross examination, he stated that the department had not issued any written letter to the petitioner to join his duties and that he had worked w.e.f. 1972 till date.

12. When the statement of the petitioner (PW-1), is read in the face of his allegations, made in the petition, wherein, he has alleged to have worked with the respondent, regularly w.e.f. 1964 to 1989, the same becomes contradictory because in it, the petitioner has stated to have worked with the respondent since, 1970. From the suggestion, which has been given to Shri Ashwani Kumar (RW-1), it is further highlighted that he had worked with the respondent w.e.f. 1972. Ex. RW-1/D, is the certificate, in respect of the date of birth of the petitioner which has been procured by the respondent from Secy. Gram Panchyat, Jonaji. As per this certificate, the date of birth of the petitioner is 1949. The petitioner has also brought, on record, his date of birth certificate which is Ex. PB. As per this certificate, his date of birth is 17.12.1952. In the cross examination, the petitioner (PW-1) has admitted that certificate Ex. PB had been issued to him on the basis of his affidavit and not as per the Panchyat record.

13. In the petition, it has been specifically alleged that the petitioner had been engaged by the respondent in the year, 1964. During the proceedings of this case, the petitioner did not take any steps to get this date corrected by moving any application that the same had been wrongly written. If, his such initial engagement/appointment is considered on the face of his date of birth certificate Ex. PB wherein, his date of birth has been mentioned as 17.12.1952, it comes to light that in the year 1964, when he was allegedly engaged, his age was only twelve years. This conduct of the petitioner in approaching this Court with misleading facts definitely goes against him. Even, it can be said that the evidence, which he has led in support of his date of birth has also become doubtful/suspect in the face of birth certificate Ex. RW-1/D, brought on record, by the respondent.

14. Although, in his statement, the petitioner (PW-1) has stated that in the year, 1989, his services were terminated without notice and compensation but he has not mentioned the month in which his services were so terminated. It has been specifically stated by Shri Ashwani Kumar (RW-1) that the petitioner had worked w.e.f. 1.3.1987 till 31.8.1989 and that only in the year, 1988, he had completed 240 days. In the year, 1989, he had worked for 235 days as per mandays chart Ex. PA. From his statement, it is further highlighted that in the month of August, 1989, the department had sanctioned the strength of fifteen beldars and that only twelve including the petitioner turned up for work. In the month of September & October, 1989, the muster rolls were again issued for the same strength of beldars but the petitioner did not turn up. The perusal of muster rolls, Ex. RW-1/BH & RW-1/C goes to show that the petitioner had not turned up to do work in the said months. In Ex. RW-1/B, there is also a note encircled 'A' that the petitioner had been called by Mate Shri Devi Ram but despite that, he did not turn up. Even, the petitioner (PW-1) admits this fact.

15. From the documentary as well as oral evidence which has come, on record, it is abundantly clear that for the months of September & October, 1989, the muster rolls had been issued for the same strength of beldars but the petitioner had not turned up to do the job. Thus, the contention of the petitioner that his services had been terminated in the month of September, 1989 becomes totally false. On the contrary, the respondent has duly proved that in the month of September, 1989, the petitioner did not turn up to do the job and that he had also been sent message through Devi Ram, Mate as is also evident from the entry encircled 'A' in muster roll Ex. RW-1/B. It is true that in the statement of the petitioner (PW-1), it has come that he had completed 240 days preceding his termination. At this stage, I would like to point out that the respondent was required to comply with the provisions of section 25F of the Act, only, if the services of the petitioner were required to be terminated. In the instant case, it stands duly proved, on record, that the services of the petitioner had not been terminated by the respondent but on his own, he had abandoned the job and even did not turn up despite having been called. It is true that no notice, in writing, was issued to the petitioner to resume his duties but, the muster rolls, the copies of which are Ex. RW-1/B & Ex. RW-1/C, go to show that the same were for the same strength of beldars as for the month of August, 1989. Had, there been any such intention on the part of the respondent to terminate the service of the petitioner it would not have issued the muster rolls for the same strength for the months of September & October, 1989. This conduct of the respondent clearly goes to show that even, during the month of October, 1989, it had waited for the petitioner to join his duties but he failed to do so. Further, the manner, in which, the petitioner has raised an industrial dispute, after such a long time, clearly goes to show that on his own, he had abandoned the job. Had it been not so then he was not to take such a long time to raise such a dispute. Thus, I have no hesitation in holding that the petitioner has failed to prove that his services were terminated in an improper and unjustified manner by the respondent. Accordingly, my answer to this issue is in "No".

Issue no. 2

16. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue no. 3

17. It is not understandable as to why this petition, in the present form, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned DDA for respondent could not explain as to why this petition, in the present form, is not maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

Issue no. 4

18. As far as this issue is concerned, no specific evidence has been led by the respondent. Further, when the petitioner had raised an industrial dispute and the conciliation failed, a reference was made to this court by the appropriate government and in pursuance thereof, the petitioner filed a statement of claim. When, such is the position then it cannot be said that he is estopped from filing this claim by his act & conduct. Accordingly, my answer to this issue is in "No".

Issue no. 5

19. It could not be explained by the respondents as to why this petition suffers from delay and latches. There lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing – cum processing Service Society Limited and Another* have held as under:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

20. Consequently, in view of law laid down by Apex Court, I hold that this petition is not suffers from delay and latches, to which my answer is in "No".

Issue no. 6

21. An objection has been taken by the respondent that the respondent department is not an Industry but this objection does not hold good in view of the law laid down by the ***Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa*** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondent is governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 12th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA, CAMP AT SOLAN.

Ref no. 63 of 2005.
Instituted on 5.7.2005.
Decided on. 12.8.2010.

Tara Devi W/o late Shri Panchi Ram R/o Flax House, The Mall Kasauli, District Solan, HP.

Petitioner.

VS.

The Officer Incharge, Air Force School C/o Air Force Station, Kasauli, District Solan, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Kanwar, Dy. DA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Smt. Tara Devi W/o late Shri Panchi Ram, ex Aya –cum- Peon by the Officer Incharge, Air Force School Kasauli, District Solan, HP w.e.f. 21.12.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Smt. Tara Devi is entitled to?”

2. Briefly, the case of the petitioner is that during the year, 1981, her services were commenced as an Aya from Peon in the employment of the respondent school. She was performing all types of duties as a class-IV employee from 8.00 AM till the closure of the school i.e 2.00 PM. In this way, she had been working, as permanent and full time employee, for the last twenty one years, despite the fact that she was being paid Rs. 1,000/-, per month, as fixed wages/salary. It is alleged that her service remained continued till 21.12.2002, when she was illegally and unlawfully not allowed to enter the school. In this way, her services stood orally retrenched/terminated without any cogent reason/justification. She had also worked for 240 days in each calendar year during the tenure of her service. In the month of June, 2002, the then Officer Incharge, had levelled some baseless charges against her with ulterior motive to remove her from service and to adjust someone in her place. In this way, she was continued to be ill-treated till her illegal removal from service. It is further maintained that the respondent had not ordered to hold any enquiry against her for the charges including those which were served upon her vide letter dated 12.12.2002. Throughout her service tenure, her work and conduct had been excellent. After her termination, the respondent employed a new hand namely Smt. Champa in her place and that from the date of her termination, she is unemployed. Since, her services were terminated/retrenched in contravention of the provisions of section 25F, G & H of the Industrial Disputes Act, 1947 (hereinafter referred as Act), she deserves to be reinstated, in service, with all the consequential benefits including back wages.

3. The petition has been contested on having raised various preliminary objections, including maintainability and that the provisions of the Act are not applicable to the respondent which does not fall under the definition of ‘Industry’ as defined in section 2 (j) of the Act. On merits, it has been asserted that the respondent school was opened in the year, 1986 and for this reason, the assertion of the petitioner that she had been working since 1981, is totally false. It is further asserted that although the school was started in the year, 1986 but the petitioner was employed only in the year, 1995, on part time contractual basis, and that her working hours were from 0900 hours to 1330 hours. In the respondent school, two teachers and one Aya are being employed on part time contractual basis for a fixed term from 1st Feb. to 31st December, every year. For the new session, every year, fresh applications are invited. As, the employment of the petitioner had expired on the closure of the school, on 22.12.2002, thereafter, she was not considered for the next session due to her indecent behavior towards the children for which she had been warned time and again. In fact, there had been numerous complaints against her qua her ill behavior towards the children/students. Apart from this, she had not applied for employment, afresh, and for this reason, she was not considered for further employment. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. The pleadings of the parties, gave rise to the following issues, which were struck on 13.7.2006.

1. Whether the services of the petitioner have been wrongly terminated without complying the provisions of I.D Act, 1947? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable?

OPR.....

4. Relief.
 6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
 7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.
- | | |
|------------|---|
| Issue no.1 | Yes. |
| Issue no.2 | Entitled to reinstatement with seniority and continuity alongwith back wages @ 50%. |
| Issue no.3 | No. |
| Relief. | Reference answered in favour of the petitioner, per operative part of award. |

Reasons for findings

Issue no. 1

8. As per the allegations made in the petition, the petitioner had commenced her service as Aya-cum-Peon in the respondent school somewhere during the year, 1981 and that this fact, she has also supported, while appearing in the witness box as PW-1. She has also brought, on record, appointment letter Ex. P/A in support of her assertion that she had been given appointment in the respondent school in the year, 1983 (27.8.1983). As far as the defence version is concerned, it is very specific to the effect that the respondent school came into existence in the year, 1986. Even, the petitioner (PW-1), has admitted in the cross examination that the respondent school started functioning in the year, 1986 but denied that she did not start working in the school since 1983. It is not understandable as to how, the petitioner could have been given appointment in the respondent school in the year, 1981 when it was not in existence at that time. It is true that the petitioner has brought, on record, her appointment letter Ex. P/A vide which she was appointed as an Aya in the respondent school and that the said letter is dated 27.8.1983 but it is not understandable as to how the petitioner could have been given appointment in the year, 1983, when the respondent school had not been in existence. Thus, there is no convincing and reliable evidence, on record, which could go to show in which year, the petitioner had been initially given appointment in the respondent school.

9. From the pleadings of the parties, it is quite clear that there is no dispute, between the parties, as far as the appointment of the petitioner in the respondent school as an Aya is concerned. It has been specifically pleaded by the respondent that the petitioner had been engaged/employed in the year, 1995, on part time contractual basis and that her duty hours were for 4.30 hours per day and 22 ½ hours per week.

10. The petitioner (PW-1) has stated that she worked continuously till 21.12.2002, when her services were illegally terminated and that in each calendar year, she had worked for more than 240 days. She had neither been issued any notice nor paid compensation, at the time of her termination. After her removal, one Ms. Rekha, whose mother is serving in the Air force, has been appointed in her place. In the cross examination, she denied that her services were not terminated but the same came to an end after the completion of the tenure of her employment. She admitted of not having applied for reengagement but denied that since she did not apply for reemployment, fresh, for this reason, she was not considered for further employment. She expressed her ignorance that there had been an advertisement for the post of Aya which is Ex. R-1 and that one applicant had applied, in response to the advertisement, who was selected. She further admitted that in the school, there are only two part time teachers and one part time Aya and that they are employed for specific period. She denied of having been employed on yearly contract basis w.e.f. 1995 only and that there had been many complaints, against her, by the parents of school children regarding her ill treatment.

11. According to Shri Brijesh Babu (RW-1), the petitioner had been appointed as an Aya in the school on fixed wages of Rs. 1,000/-, per month and that her working hours were from 9.30 AM to 1.30 PM, as per the terms and conditions of service, vide mark R-1/A. On 18.12.2002, she had been intimated that the school was going to be closed w.e.f. 21.12.2002 and for this reason, till new session, her services were not required. He further stated that the conduct of the petitioner was not good towards the children and for this reason there were complaints, mark R-2A to R- 2/G, against her from the parents of the children. She had also been served with notice Ex. RA. Despite her ill behavior, she was not dismissed or terminated during the continuation of her term in the employment which stood completed on 21.12.2002, on which date, she was relieved from her duties. In the cross examination, he admitted that she used to work from 9.00 AP to 5.00 PM but further explained that on alternative days. On mark R-1/A, there is no sign of anyone. He denied that the complaints mark R-2/A to R-2/G have been concocted by the management. No chargesheet had been served upon the petitioner and that no enquiry was got conducted against her. He further admitted that the petitioner had been given relieving letter and that no compensation was paid to her.

12. When regard is given to the statement of Shri Brijesh Babu (RW-1), it is revealed that he has no where stated that the petitioner was initially appointed in the year, 1995 as is the stand of the respondent school, in its

reply. Even if, it is believed that the petitioner had been initially engaged in the year, 1995, that also goes to show, till 21.12.2002, she continued to remain in the service of the respondent school. Undoubtedly, the stand of the respondent is also to this effect that the behavior of the petitioner towards the children was not good and for this reason, there had been many complaints against her, from the parents of the children. I may like to observe that on the basis of such complaints in respect of her ill behavior towards children, she was not served with any charge sheet nor any domestic enquiry was got conducted. In the absence of such, the issuance of relieving order/letter to the petitioner, vide which her services stood relieved w.e.f. 31.12.2002 cannot be said to be legal and justified.

13. The contention of the respondent is also to this effect that the services of the petitioner were being engaged as an Aya from session to session basis which used to come to an end after the completion of session (Feb to December every year). In the statement of the petitioner, it has come that in each calendar year, she had completed 240 days. From her statement, it is abundantly clear that she had also completed 240 days in the twelve preceding months from the date of her alleged termination/relieving. Besides that the behavior of the petitioner towards the children was not good, the respondent has also taken a plea that since, the petitioner had not applied, pursuance to the advertisement inviting applications for the post of Aya, she was not considered and that the applicant, who had applied for the same, was selected. At this stage, I would like to observe that since, the petitioner has proved to have completed 240 days in each calendar year including the twelve calendar months preceding her termination, it was obligatory upon the respondent to have complied with the provisions of section 25F of the Act before terminating/relieving her service. It has been specifically stated by the petitioner (PW-1) that neither she was given any notice nor paid compensation and on the basis of her such statement it stands duly proved that her services were terminated in contravention of the provisions of the aforesaid section. Further, the respondent, in place of the petitioner, has engaged the services of some other person as is evident from the material on record. In case, some other person was required to be appointed in place of the petitioner, a notice was required to be given to her as per the requirement of section 25H. In the instant case, it cannot be disputed that the petitioner had remained in the service of the respondent school since very long time. For her being in service for such a long time was also a circumstance which would have required a notice to have been issued to her in case, in her place, some one else was required to be given appointment, in pursuance to the advertisement. Since, the respondent terminated/relieved the services of the petitioner in contravention of the provisions section 25F, 25G & H of the Act, I have no hesitation in holding that her termination/relieving is in contravention of the provisions of the Act. Accordingly, my answer to this issue is in "Yes".

Issue no. 2

14. In the petition, it has been alleged that since her illegal removal from service, the petitioner is unemployed. When regard is given to her statement (PW-1), it is highlighted that according to her, she has not been working anywhere after her termination. From the evidence, which has been led by the petitioner and that which has not been rebutted by the respondent, there remains no place for doubt that after her termination, the petitioner is unemployed. In other words, it can be said that after her termination, she has not been gainfully employed. Since, while deciding issue no.1, it has already been held by me that her services were terminated in contravention of the provisions of the Act, the petitioner, for her being not gainfully employed, after her termination, deserves to be granted back wages. However, it requires to be ascertained as to whether she deserves to be granted full wages or less. When regard is given to the cross examination of the petitioner (PW-1), it is revealed that since 9.8.2007, she has been reengaged by the respondent as leadly searcher in Hanuman Temple, Kasauli. Taking into consideration all the facts and circumstances, I am of the view that petitioner should be granted back wages @ 50 % from the date of her termination till the date when was reengaged in service with seniority and continuity. Thus, my answer to this issue is in "Yes" accordingly.

Issue no. 3

14. Definitely, an objection has been taken by the respondent that the respondent school does not fall under the definition of Industry and for this reason, this petition is not maintainable but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondent is governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that she(petitioner) be reinstated in service, with seniority and continuity alongwith back wages @ 50%, from the date of his illegal termination i.e 21.12.2002. Consequently, the reference stands answered in favour of the petitioner and

against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 12th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.
Camp at Solan.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no.64 of 2005.
Instituted on.27.4.2009.
Decided on. 31.8.2010.

Prem Raj S/o Shri Ram Chand R/o VPO Mahasu, Tehsil Kotkhai, District Shimla, HP.

Petitioner.

Vs.

1. The Managing Director, HP Tourism Development Corporation Ltd., Shimla-1.
2. The Assistant Engineer, Tourism Development Corporation, Sub Division, Barog, Tehsil & District Solan. Now at Holiday Home Hotel, Shimla, HP.

Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.

For respondent : Shri Tarun Vaid, Ld. Csl.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Prem Raj S/o Shri Ram Chand, ex daily wage junior draughtsman by the (1) the Managing Director, HP Tourism Development Corporation Ltd., Shimla-1. (2) the Assistant Engineer, Tourism Development Corporation, Sub Division, Barog, Tehsil & District Solan. Now at Holiday Home Hotel, Shimla, HP w.e.f. 8.3.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of consequential service benefits including reinstatement, seniority, back wages and amount of compensation, the above aggrieved workman is entitled to”.

2. Briefly, the case of the petitioner is that he was initially appointed as beldar, on daily wages basis with the respondents corporation w.e.f. 18.4.1997 and worked as such till 30.4.1998. Thereafter, w.e.f. 1.5.1998, his designation was changed to Junior Draughtsman and that he worked as such till 18.3.2000, when his services were terminated without any reason. Against his such illegal termination, he had filed an OA no. 1736/2000, before the State Administrative Tribunal, which was returned as per order dated 10.5.2002 for want of jurisdiction. Thereafter, he filed a demand notice and that since the conciliation could not be effected, a reference was made to this Court. It is alleged that the petitioner had remained in the service of the respondent continuously w.e.f. 8.4.1997 till March, 2000 and that he worked with full sincerity, honesty, devotion, missionary zeal and also to the utmost satisfaction of his superiors. He had also completed 240 days in each year, despite the fact that he had been given artificial and fictional breaks. Further, juniors to him were allowed to continue in service. Since, his services were terminated without notice & compensation, the same is illegal for being in violation of the provisions of section 25F, 25G & H of the Industrial Disputes Act, 1947 (hereinafter referred Act). Against the aforesaid backdrop, a prayer has been made for his reinstatement alongwith all the consequential benefits including back wages.

3. The petition has been contested on having raised a preliminary objection qua maintainability. On merits, it has been asserted that the petitioner was engaged as unskilled worker on contract basis for a period of 89 days and as such first agreement was entered into, on 8.4.1997 to 30.4.1998 indicating the period of engagement for 89 days. In this way, the time limit was the essence of the agreement. The last agreement was entered into between the parties on 31.12.1999, and that after the expiry of the period, the services of the petitioner stood disengaged. Since, the

services of the petitioner had not been disengaged, his services stood disengaged in terms of section 2(o) (b) of the Act. It has been denied that juniors to the petitioner have been retained in service. As far as filing of an OA by the petitioner is concerned, this fact has been admitted. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.11.2008.

1. Whether the termination of the services of Shri Prem Raj ex daily wages junior draughtsman by the respondents w.e.f. 8.3.2000 without complying with the provisions of Industrial disputes Act, 1947 is improper and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, the petitioner is entitled to?

OPP.....

3. Whether the claim is neither competent nor maintainable as alleged?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Accordingly Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue no. 1

8. While appearing in the witness box as PW-1, the petitioner has supported all the material facts, on oath, including that initially he had been engaged as daily wage beldar on 8.4.1997 and continued as such till 30.4.1998. Thereafter, on having qualified a test for appointment as Tracer Draughtsman, he was appointed as such on 1.5.1998 and continued till 8.3.2000, when his services were terminated without any notice and compensation. In each calendar year, he had completed 240 days including the year preceding his termination. Ex. PA is the copy of the mandays chart. His junior Smt. Surekha Negi, is still working with the respondent and in this regard, he has sought information under the RTI Act and the same is Ex. RB. In the cross examination, he admitted that initially he was engaged on contract basis for 89 days but denied that no junior to him has been retained by the respondent. Ex. RB does not bear the seal of the department and that the same had been in his possession since 11.2.2009.

9. According to Shri Paramjit Katonaria (RW-1), the petitioner had been initially engaged as beldar for 89 days to assist the field staff and regarding his engagements, he had executed agreements Ex. RA to Ex. RD. Smt. Surekha Negi, had been engaged by the Head Office as Store Clerk and that no junior to the petitioner has been engaged by the respondent. The services of the petitioner had stood automatically disengaged on the completion of the contract period i.e 89 days and that his services were never terminated. In the cross examination, he denied that the petitioner had also worked as Junior Draughtsman w.e.f. 1.5.1998 to 8.3.2000 for 89 days basis and that in the twelve calendar months preceding his disengagement, he had completed 240 days. Vide Ex. PR/1, in a meeting, it had been agreed that the petitioner be engaged in the Head Office but the same was not approved by the competent authority. No notice and compensation had been paid to the petitioner at the time of his disengagement. He further explained that there was no such requirement as his services had been disengaged on the basis of agreements which he had entered into with the respondent. He does not know that Smt. Surekha Negi had been regularized on 17.1.2009 as Junior Draughtsman.

10. On the record, the respondents have brought agreements Ex. RA to Ex. RD which go to show that the engagement of the services of the petitioner were purely on contract basis for a period of 89 days. At this stage, I would like to point out that this fact cannot be ignored that the services of the petitioner were kept on being reengaged after the expiry of the agreements till, his services stood finally disengaged. It is also not a disputed fact that before his

alleged termination/disengagement, the petitioner had not been given notice or paid retrenchment compensation. The mandays chart, Ex. PA goes to show that in the twelve calendar months preceding his alleged termination, the petitioner had completed 240 days. This fact has also been admitted by Shri Paramjeet Katonaria (RW-1). It has been held by their lordships of **Hon'ble Supreme Court in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434**. "that the appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the termination was not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947.

11. **Similarly our own Hon'ble High Court in case Shri Manoj Kumar Sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007** has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice.

12. Undoubtedly, the respondents have taken a plea that since, the services of the petitioner had been engaged on contract basis as per agreements, aforesaid, his alleged termination/disengagement does not fall within the definition of retrenchment as given under section 2 (oo) but the same is governed by the exception as given under section 2 (oo) (bb) of the Act but the plea of the respondent does not hold good in view of the law laid down supra. Since, it stands proved, on record, that in the preceding twelve calendar months, before his termination, the petitioner had completed 240 days, it was obligatory upon the respondents to have issued him notice and also to pay him retrenchment compensation as per section 25F of the Act. Since, nothing such was done, I have no hesitation in holding that the alleged termination/disengagement of the petitioner is in contravention of the provisions of section 25F of the Act and for this reason, the same is illegal and improper.

13. It has been alleged by the petitioner that Smt. Surekha Negi, who is junior to him, is still working with the respondent. This fact, he has supported, on oath, while appearing in the witness box as PW-1. However, from the information Ex. PB, which he has received under the RTI Act, it is highlighted that the actual date of appointment of Surekha Negi as Junior Draughtsman in the corporation is 6.4.1998. It has been stated by the petitioner (PW-1) that he was appointed as Tracer Draughtsman on having qualified a test on 1.5.1998. From his own evidence, it is quite evident that Surekha Negi is not junior to him. In this way, the retrenchment/termination of the petitioner for being in violation of the provisions of section 25G & H is not proved. Consequently, for my above discussion, my answer to this issue is accordingly in "Yes".

Issue no. 2

14. It has not been alleged by the petitioner that he is unemployed. Moreover, in his statement (PW-1), nothing such has come which could go to show that he is not gainfully employed. In this way, having regard to the facts & circumstances of the case and also the period, for which, he had remained engaged with the respondent, I am of the view that he does not deserves to be granted back wages. **It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry". Consequently, in view of the law laid down by the Hon'ble Apex Court, the petitioner is held not to be entitled for back wages. However, since his services had been terminated, in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no. 3

15. It is not understandable as to why this petition is neither competent nor maintainable, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this petition is neither competent nor maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 8.3.2000. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File,

after completion be consigned to records. Announced in the open court today this day of 31st August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, SHIMLA

Ref no. 79 of 2009.
Instituted on 29.9.2009.
Decided on. 11.8.2010.

Shankar Dutt Attri R/o Village Sahog Chawsa, Tehsil Kandaghat, District Solan, HP.

Petitioner.

Vs.

Managing Director M/s Bhartendu Printing Press, Lower Bazar 109/05 Shimla, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Niranjn Verma Advocate.

For respondent: Already exparte.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of the services of Shri Shankar Dutt Attri by Managing Director, M/s Bhartendu Printing Press, Lower Bazar, 109/05, Shimla HP w.e.f. 11.11.2007 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and amount of compensation, the aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that he was engaged/appointed as offset machine operator on 15.6.1999 by the respondent, in his printing press, and continued, as such, till 11.11.2007, when his services were terminated for the reason that he had demanded back wages. Before terminating his services, no notice or compensation was paid to him, besides getting conducted an enquiry. In this way, his services were terminated without complying with the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred Act). Further, his junior, Raj Kumar has been retained and that the respondent has made fresh appointments. Since, his services were terminated in contravention of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits.

3. The respondent was duly served and put his presence before this Court on 21.11.2009. On 26.12.2009, when the case was fixed, the respondent was not present and he was ordered to be issued notice for 19.2.2010, from which date, the case was adjourned to 2.3.2010. The respondent had put his presence on 2.3.2010 and the case was fixed for 16.4.2010 for filing reply but on the said date neither he appeared in person nor through counsel and as such proceeded against ex-parte.

4. By way of ex-parte evidence, the petitioner has examined himself as PW-1.

5. Besides having heard the learned counsel for the petitioner, I have also gone through the record of the case carefully.

6. The petitioner (PW-1) has supported all the material facts as alleged in the petition, while stepping into the witness box, on oath, including that in every calendar year w.e.f. 15.6.1999 till 2007, he had completed 240 days. He further confirmed this fact that before terminating his services, no notice had been issued to him and that one Shri Raj Kumar, had been engaged/appointed in his place.

7. From the statement of the petitioner (PW-1), which has gone unchallenged, it stands duly proved that in the twelve calendar months preceding his termination, he had completed 240 days. From his statement, it is further

proved that the respondent had not given him one month's notice, in writing, indicating the reason for his termination or in lieu thereof, wages for the period of notice. The evidence, which has been led by the petitioner, further goes to show that the respondent had also not paid retrenchment compensation to him. In these circumstances, the services of the petitioner are proved to have been terminated in contravention of the provisions of section 25F of the Act. Thus, for non-compliance of the requirements of the said section, his termination is held to be improper and illegal.

8. Now, it is to be ascertained as to what benefits, the petitioner is entitled to. When, regard is given to the statement of the petitioner (PW-1), it is revealed that he has not stated even a single word that after his termination, he has not been gainfully employed. His version is to this effect that he be reinstated with back wages. Moreover, even in his petition, it has not been alleged by him that after his termination, he is unemployed. In order to claim back wages, the petitioner was required to lead convincing and satisfactory evidence that after his retrenchment/termination, he has not been gainfully employed. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"***. Having regard to the facts and circumstances of the case and also in view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. However, since his services had been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages.

9. In view of my foregoing discussion, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 11th August, 2010.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, SHIMLA

Ref no. 91 of 2006.
Instituted on 13.7.2006.
Decided on. 7.8.2010.

Babu Ram S/o Shri Nathu Ram R/o Village Jai Nagar (Patta), P.O Jai Nagar, Tehsil Arki, District Solan, HP.
Petitioner.

VS.

The Divisional Manager, HP State Forest Corporation, Ltd., Forest Working Division, Solan, District Solan, HP.
Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Vivek Negi, Advocate. For respondent: Shri Peeyush Verma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

"Whether the termination from service after holding domestic enquiry of Shri Babu Ram S/o Shri Nathu Ram daily wage basis Watcher w.e.f. 12.2.1997 by the Divisional Manager, HP State Forest Corporation Ltd., Forest Working Division Solan, HP is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. In nutshell the case of the petitioner is that he was appointed/engaged as daily wage resin watcher, on 1.3.1978, with the respondent, at Baddi Depot. and continued to work as such till 31.7.1997, when he was arrested, for

having allegedly committed the offence of theft, of resin tins, alongwith other employees of the corporation. However, during investigation, it was found that he was innocent and vide order dated 10.8.2001, passed by Ld. SDJM in case no. 62/2002, he was discharged. In fact, some other persons had been involved in the theft and subsequently they were arrested. After his arrest, he remained in custody and released, on bail, on 17.2.1997. Thereafter, on 18.2.1997, he reported for duties in the office of Assistant Manager, State Forest Corporation at Nalagarh, District Solan, but informed that his services stood terminated. The Assistant Manager handed over, to him, documents such as memo no. FWDS/E-82/1340-04 dated 28.1.1997 memo no. FWDS/E-82/II-138111-12 dated 4.2.1997 and office order bearing Endst. No. HPSFC/FWDS/E-65/1448-50 dated 12.2.1997, whereby his services stood terminated. In fact, all the aforesaid documents had been endorsed to the Assistant Manager of the Corporation to deliver the same to him (petitioner). It is alleged that neither the Assistant Manger nor any person, on his behalf, delivered the aforesaid documents, to him, prior to 18.2.1997, and for this reason, he could not submit his reply to the same. Thereafter, on 20.9.1997, he got sent a notice to Divisional Manager of the Corporation through counsel for recalling the office order dated 12.2.1997, but of no avail. It has further been maintained that on the night intervening 24th and 25th Jan., 1997, when the theft of about 191 tins of resin had taken place from the road side depot. at Chhachhi, Tehsil Nalagarh, the petitioner was in his residential house situated at a distance of about 500 mtrs therefrom. At the depot., the corporation had appointed S/Shri Tika Ram, Subhash Chand and Ranbir, chowkidars. The duty of the petitioner, at that time, was in the field/forest, about 6-7 kilometers away from the aforesaid depot. and that he had not been assigned the duties of chowkidar. In this way, he was not connected/concerned in respect of the theft which had taken place during night time and that too when he was not on duty as chowkidar of the depot. Further, the respondent has retained the services of his juniors in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act). He had also completed 240 days in each calendar year. After his illegal termination, he had filed an OA no. 561/1997, before State Administrative Tribunal but vide order dated 9.4.2001, it was held that the State Tribunal had no jurisdiction. Since, his services were terminated without proper enquiry and also in violation of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections, including maintainability and estoppel. On merits, it has been asserted that since the petitioner was involved in gross misconduct of theft and was arrested, his services had been rightly terminated, in accordance with law vide letter dated 12.2.1997, as he had not filed any reply to the memos issued to him. It has been specifically denied that the relevant letters/documents were not delivered to him prior to 18.2.1997. Further, the enquiry report had indicted the petitioner. It has been specifically denied that the same was unilateral and prepared by the officials of the respondent in order to save themselves or the real offenders. Further, the principles of natural justice had been duly complied with. It has also been specifically denied that the petitioner had completed 240 days.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. **The pleadings of the parties, gave rise to the following issues, which were struck on 30.8.2007 by the then Presiding Judge, Labour Court, Shimla.**

1. Whether the termination of the petitioner on the basis of domestic enquiry is legal? If so, its effect??
OPP.....
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?
OPP.....
3. Whether the petitioner had no locus standi to file the present petition and the petition is not maintainable?
OPR.....
4. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Decided accordingly.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

8. From the reference, which has been made to this Court, coupled with the stand, having been taken by the respondent, it appears that before terminating the services of the petitioner, a domestic enquiry had been got conducted against him. At this stage, I would like to point out that although in the reply, it has been mentioned that such an enquiry had been got conducted from the Assistant Manager, Nalagarh but his name has not been mentioned. However, when regard is given to the statement of Shri Uthpal Dass (RW-1), it is revealed that Shri Jawahar Sharma, was the Assistant Manager, Nalagarh, who had conducted the enquiry against the petitioner. It is interesting to further note that although the services of the petitioner had been terminated on the basis of domestic enquiry which was conducted by Assistant Manager, Nalagarh (Shri Jawahar Sharma) but he has not been examined before this Court. From the statement of Shri Utpal Dass (RW-1), it appears that the petitioner had made a statement Ex. RA (objected to) during the enquiry, wherein he had admitted of having been on duty on the night of theft i.e. 24.1.1997. Such statement cannot be said to have been proved in accordance with law for the reason that Shri Jawahar Sharma, who had allegedly conducted the domestic enquiry, has not appeared in the witness box. Similarly, the enquiry report, Ex. RB (objected to) which has been brought, on record, cannot be said to have been proved in accordance with law.

9. In the statement of the petitioner (PW-1), it has come that consequent upon the registration of a theft case, at Police Station Ramshehar, he had been arrested and bailed out on 17.2.1997. On 18.2.1997, when he went to join his duties, the Assistant Manager had handed over three letters, Ex. PA to Ex. PC which he had replied, on 20.2.1997, vide Ex. PD. As per the contention of the respondent, the aforesaid letters had been delivered to the petitioner before 18.2.1997 and that despite the delivery of Ex. PA & Ex. PB, he (petitioner) had not filed any reply and consequently, his services were terminated, vide Ex. PC, for his failure to have filed reply and further that he had confessed of having been on duty at Chhachhi depot on the night, when the theft took place. The perusal of Ex. PA & Ex. PB, goes to show that the same had been addressed to the petitioner as C/o Assistant Manager, Nalagarh, who had been asked to get the letters delivered to the petitioner against proper receipt. Whereas letter Ex. PA is dated 28.1.1997, letter Ex. PB of 4.2.1997. From the statement of Shri Uthpal Dass (RW-1), it is revealed that regarding the theft, which had taken place on 24.1.1997, the FIR was lodged on 25.1.1997 and the petitioner was arrested. As per the version of the petitioner (PW-1), he had been bailed out on 17.2.1997. This clearly goes to show that when aforesaid letters Ex. PA & Ex. PB were issued/sent, the petitioner was in the custody of Police. Even, Shri Uthpal Dass (RW-1), admits that no such record has been brought by him which could go to show that the aforesaid letters were delivered to the petitioner. In these circumstances, it stands proved that there was no occasion for the petitioner to have filed reply to the aforesaid letters Ex. PA & Ex. PB, particularly, when the same have not been proved to have been delivered to him. Thus, the contention of the respondent that the petitioner did not file reply, to the aforesaid letters, cannot be believed. It has been made clear by the petitioner (PW-1) that when he was bailed out, and went to join his duties on 18.2.1997, the Assistant Manager handed over three letters Ex. PA to Ex. PC, to him, which he had replied vide Ex. PD. Although, the Ld. Counsel for the respondent has urged with vehemence that the services of the petitioner were terminated as per law, vide Ex. PC but I disagree with the Ld. Counsel for the reasons as stated above. As per the principles of natural justice, it was required of the respondent to have afforded sufficient opportunities to the petitioner of being heard before terminating his services which in this case is totally lacking. It has been held by Hon'ble Apex Court in **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221**. that:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In the instant case, no opportunity to defend himself, had been afforded to the petitioner. Thus, keeping in view the law laid down by Hon'ble Apex Court (supra) as well as the entire facts and circumstances of the case, I hold that the respondent has miserably failed to prove that the services of the petitioner were terminated legally, on the basis of fair and proper domestic enquiry. Accordingly, my answer to this issue is against the respondent and in favour of the petitioner.

Issue no. 2

10. While deciding issue no.1, I have held that the services of the petitioner were not terminated legally. Now, it has to be determined to what service benefits the petitioner is entitled to. The petitioner has not alleged that he is unemployed. Moreover, in his statement (PW-1), nothing such has come which could go to show that he is not gainfully employed. In this way, having regard to the facts & circumstances of the case and also the period, for which, he had remained engaged with the respondent, I am of the view that he does not deserves to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.*** Consequently, in view of the law laid down by the Hon'ble Apex Court, the petitioner is held not to be entitled for back wages. However, since his services had

been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no. 3

11. Definitely, petitioner has locus standi to file the present petition which he has filed pursuant to the reference having been made to this Court. It could not be explained on behalf of the respondent as to why this petition is not maintainable. Accordingly, the respondent fails to prove this issue, to which my answer is in "No".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his illegal termination i.e 12.2.1997. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, SHIMLA

Ref no. 103 of 2005
Instituted on 19.12.2005.
Decided on. 11.8.2010.

Pintoo Yadav S/o Shri Kesrio Yadav, C/o Shri Satish Kumar, Branch Secy., HP AITUC, Near State Bank of
Patiala, Baddi, District Solan, HP.

Petitioner.

VS.

The Manager M/s Surya Pharmaceuticals Ltd., Plot No. 85, Baddi, District Solan, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Sharma, Advocate.

For respondent: Shri Narinder Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

2. In nutshell the case of the petitioner is that he was engaged as helper in the establishment of the respondent, on 31.7.1999, on monthly salary/wages at Rs. 1800/-. Although, he had served the respondent company honestly and efficiently but on 14.6.2003, when he, as usual, went for duty, he was not allowed to enter the factory. In this way, his services were illegally terminated by the respondent without any notice/charge sheet. Earlier, his services had also been terminated on 19.6.2001 but he was taken back on the intervention of the Labour Officer. Since, his services were terminated illegally, he is entitled to be reinstated with all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections, including maintainability. On merits, it has been asserted that w.e.f. 14.6.2003, the petitioner, on his own, had abandoned the job. When he failed to turn up till December, 2003, his name was struck off from the attendance register. It is further maintained that he is not interested to do the job and that this petition has been filed to harass the respondent.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 24.7.2007. 56. Whether the services of the petitioner have been illegally terminated by the respondent and his demand for reengagement is justified? If so, its effect?

- | | | |
|----|--|----------|
| 1. | If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? | OPP..... |
| 2. | Whether the petition in the present form is not maintainable? | OPP..... |
| 3. | Whether the petitioner is gainfully employed as he abandoned his job at his own? | OPR..... |
| 4. | Relief. | OPR..... |

6. **At this stage, it is pertinent to mention that despite having been afforded many opportunities, the petitioner failed to lead his evidence and ultimately, as per order dated 11.8.2010, his evidence was closed by the order of the Court, for the detailed reasons narrated therein.**

7. Besides having heard the learned counsel for the parties I have also gone through the record carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue no. 1

9. It has been specifically alleged by the petitioner that on 14.6.2003, he was not allowed to enter the factory and that without serving any charge sheet/notice or conducting domestic enquiry, his services were terminated in an illegal manner. It has further been specifically asserted that this act of the management constituted unfair labour practice.

10. On the contrary, the defence version is to this effect that w.e.f. 14.6.2003, the petitioner had abandoned his job.

11. Since, neither the petitioner has stepped into the witness box in support of his case nor he examined any other witness, his contention to have been terminated illegally w.e.f. 14.6.2003, is not substantiated. I may mention that initial onus was upon the petitioner to have proved that on 14.6.2003, he had come to the factory premises for his duties but the respondent management had not allowed him to enter the same. In the absence of such evidence, there is no material, whatsoever, on record, which could go to show that his services were illegally terminated by the respondent. Consequently, the petitioner has failed to prove this issue to which my answer is in "No".

Issue no. 2

12. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue no. 3

13. It is not understandable as to why the petition, in the present forum, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this petition in the present forum is not maintainable. Accordingly by holding it to be maintainable, my to this issue is in "No".

Issue no. 4

14. For the failure of the petitioner to have proved that his services were illegally terminated and also that he is not gainfully employed, no separate finding is required to be given on this issue, which stands answered accordingly.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 11th August, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 104 of 2003
Instituted on 5.4.2003.
Decided on. 5.8.2010.

Ram Dutt S/o Shri Abhi Ram R/o VPO Basha, Tehsil Kandaghat, District Solan, HP.

Petitioner.

VS.

The Divisional Forest Officer, Solan, Himachal Pradesh.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri V.K Sharma, Advocate.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of services of Shri Ram Dutt S/o Shri Abhi Ram w.e.f. 31.10.2001 by the Divisional Forest Officer, Solan on completion of 240 days of continuous service and without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service the aggrieved workman is entitled to”?

2. In nutshell the case of the petitioner is that he had been appointed/engaged in the year, 1989 by the respondent, as Mali. He continued to remain in service as such at Basha nursery. However, in the month of October, 2001, the respondent refused to allow him to do work. At that time, one Shri Chattar Singh, who was junior to him, had been retained in service and posted in his place. At the time, when he was removed from service, he was being paid Rs. 1650/- per month. This fact had also been ignored by the respondent, before removing him from service, that he had worked for more than nineteen years. Against this backdrop, he deserves to be reinstated with all the consequential benefits.

3. On having raised preliminary objection qua maintainability, the respondent has contested the claim of the petitioner on the plea that he had been engaged during the month of September, 1995 and not since, 1981 as alleged. In fact, he had been engaged as daily wage beldar and not on monthly basis. Moreover, in the month of June, 2000, he had voluntarily left the job. Thus, he had not been removed from service. Apart from this, the petitioner had requested, as per letter dated 10.12.2001, for reengaging him. Upon this, he had been directed to join the job as and when the work was available but despite having been sent written directions, in this regard, through registered post, he either refused to join work or declined to receive such communication. Only, during the month of October, 2001, i.e after about fifteen months, he had turned up to do work. It has been specifically denied that Chattar Singh is junior to him. In these circumstances, when he had left the job, on his own, he is not entitled for any benefit as per the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act).

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. *On the pleadings of the parties, the following issues were struck on 10.3.2005, by the then Presiding Judge, Labour court, Shimla.*

1. Whether the termination of services of the petitioner w.e.f. 31.10.2001 without complying with the provisions of I.D Act, 1947 is proper and justified? OPR.....
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? OPP.....
3. Whether the petitioner has abandoned the job at his own? OPR.....
4. Whether the petition is not maintainable? OPR.....
5. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Decided accordingly.
Issue no.2	Decided accordingly.
Issue no.3	Yes.
Issue no.4	No.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue no. 3

8. Whereas the contention of the petitioner is to this effect that he had been initially engaged in the year, 1981 and that in the month of October, 2001, his services were illegally terminated, the defence version is very specific that in the month of June, 2000, he had left the job, voluntarily and for rejoining, he had made a request, through letter dated 10.12.2001. It has further been clearly asserted by the respondent that only during the month of October, 2001, the petitioner had turned up for job and that too after about fifteen months. From the stand, which has been taken by the respondent, it is abundantly clear that it has totally controverted the assertion of the petitioner that his services had been terminated, in the month of October, 2001.

9. At this stage, I would like to mention that in the reply, the stand taken by the respondent is that the petitioner had joined the services in the month of September, 1995 and not as alleged by the petitioner i.e from 1981.

10. When regard is given to the statement of Shri Mohinder Singh (RW-1), it is highlighted that the petitioner had been engaged as Mali on daily wage in the month of June, 1983 and that he had continued as such till October, 2001. He further made it clear that his services had been engaged to do seasonal work and also for specific period in the forest nursery, at Basha beat and that, on his own, he had abandoned the job. He also clarified that his services had never been terminated by the respondent and that in the twelve calendar months preceding his abandonment, he had not completed 240 days. Ex. RD & Ex. RE, are his mandays chart, which are correct as per the original. Vide letter dated 10.12.2001, which is Ex. RA, the petitioner had made a request to Range Officer, Kandaghat for his reengagement by stating/clarifying that earlier, he could not attend his duties due to domestic work. He had also made such request vide application dated 20.11.2001, which is Ex. RF. Despite, having made such application, he did not turn up for his duties. Thereupon, the Block Officer, Basha sent a letter on 24.4.2003 through registered letter in order to ask him to join his duties but despite that, he did not turned up. On 21.1.2001, Forest Guard, Basha beat had made a report to Range Officer Kandaghat to the effect that the petitioner had not turned up to do his duties. Thereafter, another notice dated 25.2.2001 was sent to the petitioner to resume his duties but he refused to accept the same. In the cross examination, he stated that he could not produce the muster roll, on the basis of which comparative chart Ex. RE had been prepared. He denied that the petitioner had never made request through aforesaid letters for his reengagement. Further, stated that, today, he could not produce any record showing that, on which date, Chattar Singh had joined duties and also the petitioner.

11. Shri Chet Ram (RW-2), had remained posted as forest guard at Kandaghat from 1984 to 2001. In between, he had also remained posted at Sabathu beat and Basha beat. On having seen the original letter, he stated that Ex. RA is its copy and that the same had been submitted/filed by the petitioner in Range Office Kandaghat, where he

was present and received the same and to this effect his signatures are encircled red. At that time, the petitioner had been accompanied by Pradhan Gram Panchayat, Basa and on the application, he had appended his thumb impression in his presence and that the Pradhan had also signed the same. On having made a report, on its back, the same had been forwarded to the B.O. Letter Ex. RF, had been received from DFO, Solan in the office of Range Officer Kandaghat, which was submitted/filed by the petitioner. He further made it clear that Ex. RF is the copy of original. In the cross examination, he has stated that Ex. RA had been delivered to him at Range Office Kandaghat on 10.12.2005 by the petitioner and that the same was written in the Range Office. He does not know as to who wrote letter Ex. RA but again clarified that it had been written by the Range Clerk whose name he did not remember today. The same had been written in his presence. He expressed his lack of knowledge as to by whom writing encircled A was written. Since, the petitioner had been requesting for reemployment, he had been accompanied by the Pradhan so that the needful could have been got done by requesting the R.O. In Ex. RA, he had recommended that the petitioner should be reengaged with the department. In his presence, letter Ex. RA had neither been entered in dairy nor any stamp was put on it. On this letter, no order was made/passed by any authority. The person (petitioner), on whose behalf the letter was written, is illiterate and he thumb marked it. He denied that in order to save their skin, the department had got appended the thumb impression of the petitioner, taking advantage of his illiteracy, and that too on a blank paper. Ex. RA, has not been sent to DFO. He does not know that the competent authority to deal with such matter like Ex. RA is the DFO.

12. Shri Kewal Ram (RW-3) has appeared in the witness box to state that notice Ex. RB had been issued by Shri Sant Lal (BO Basha Block) and that he (petitioner) refused to accept its service and that it was again sent through registered letter. Endorsement, on Ex. RB, encircled red, is correct as per the original and that he identifies the signatures of Sant Lal (BO) and Kamlesh Chander (forest guard), who have worked with him.

13. According to Shri Sanjeev Kumar (RW-4), a notice dated 25.2.2007 had been issued to the petitioner to resume his duties besides having been orally requested but he (petitioner) refused to resume his duties. Subsequently a notice was sent through registered post, which is Ex. RW-4/C, containing notice Ex. RW-4/D, which was received back with the remarks that "the addressee had refused to take the same", the receipt is Ex. RW-4/B. The mandays chart, Ex. RE, is correct as per the original, brought by him. Similarly, Ex. RA, is also correct as per the original. In the cross examination, he stated that the record pertaining to Ex. RA & Ex. RB has not been prepared by him nor he maintained the same. The statement of petitioner (PW-2), is to this effect that he had been engaged, as Mali, on monthly salary of Rs. 3,000/- in October, 1981 and continued to remain as such till October, 2001 when he was terminated from service without notice and compensation. At that time, he was drawing Rs. 1680/-. Chattar Singh, who is junior to him, is still continuing with the respondent. In every calendar year preceding his termination, he had completed 240 days. In the cross examination, he denied of having joined, firstly, in the year, 1983 as daily wage beldar and that to have left the job voluntarily in the year, 2000. He denied that only for 31 days, he had worked in the year, 2001. He further denied of having made an application to the RO Kandaghat, for his reengagement, wherein, it was stated that due to domestic work, he could not join his duties earlier. He further made it clear not to have made applications mark X & Y to RO Kandaghat and that Shri Chattar Singh is senior to him. He denied of not having completed 240 days in twelve calendar months preceding his termination. There is further denial to have worked for 161 days in 2000 and 31 days in 2001.

14. Before, I proceed further, I would like to make it clear that there has been contradictory version regarding the initial engagement of the petitioner with the respondent department but from the mandays chart Ex. RD, it appears that initially, the petitioner had joined as daily wage labourer in Kandaghat Range in the year, 1983 and that in the said year, he had worked, in the month of June, for 30 days and July, 26 days (total 56 days). In the year, 1984, he had only worked for 30 days (in the month of November). Thereafter, in the years, 1985, he worked for 305 days, 1986 for 151 days, 1987 for 213 days, 1988 for 92 days, 1993 for 31 days and 1995 for 60 days. He had not worked from 1989 to 1992, at all. This document, which has not been controverted by the petitioner, clearly goes to show that initially, he had been engaged in the year, 1983 and not in the year, 1981 as is his case and did not work, at all, from 1989 to 1992 Except the year, 1985, in which he had worked for 305 days, he did not complete 240 days in the other years as mentioned above.

15. Ex. RE, is also the mandays chart of the petitioner which goes to show that in the year, 1995, he had worked for 60 days, in 1996, 200 days, in 1997, 365 days, in 1998 362 days, in 1999, 355 days and in the year 2000, 161 days. Here I would like to clarify that in the year, 2000, the petitioner had worked for 31 days in the month of Jan., 27 days in the month of Feb., 29 days in the month of March, 28 days in the month of April, 30 days in the month of May and 16 days in the month of June (total 161 days). Thereafter, in the year, 2001, he had worked for 31 days only in the month of October. For want of counter evidence, by the petitioner, this document Ex. RE also remains uncontroverted. I may also like to mention that in the statement of petitioner (PW-2) it has no where come that the mandays chart Ex. RD & Ex. RE have been falsely prepared by the respondent.

16. The case of the petitioner is very specific to this effect that in the year 1981, he had been engaged by the respondent as Mali and continued to work as such, at Basha nursery, till October, 2001, when his services were removed/disengaged. The aforesaid documents Ex. RD & Ex. RE (mandays charts), falsify his such assertion and also

deposition, which he has made before this court while appearing in the witness box as PW-2. From these documents, it is abundantly clear that only in the years, 1985, 1996, 1997, 1998 and 1999, he had completed more than 240 days. In order to take the benefit of section 25F of the Act, it was obligatory upon the petitioner to have proved with cogent, satisfactory and reliable documentary and oral evidence that before his alleged termination, he had completed 240 days in the preceding twelve calendar months. His assertion is specific to this effect that his services had been terminated in the month of October, 2001 as testified, on oath, while appearing as PW-2. From this date i.e October, 2001, it has to be seen as to whether the petitioner had completed 240 days in the preceding twelve calendar months i.e upto November, 2000. Ex. RE, the mandays chart, clearly goes to show that in the preceding twelve calendar months from the date of his alleged termination, the petitioner had only completed 31 days. In these circumstances, on the record, it has not been established that the alleged termination of the petitioner is illegal/unjustified for want of compliance of the provisions of section 25F of the Act, as per which, a notice in the prescribed manner and retrenchment compensation are required to be issued and paid.

17. Another plea of the petitioner is that Chattar Singh who is junior to him has been retained by the respondent in his place after his alleged termination. His such version has been specifically denied by the respondent in its reply. Since, the petitioner alleges that said Chattar Singh is junior to him, it was upon him (petitioner) to have led oral/documentary evidence to prove this fact. In case, he had required some documentary proof, in this regard, he could have got the same produced from the respondent with the indulgence of this Court. However, no such steps were taken by the petitioner to get the relevant record summoned. I may observe that although the initial onus was upon the petitioner to prove that he had completed 240 days and that his juniors are still in service but from the evidence, which has been led by the respondent, it has been duly proved that neither the petitioner had completed 240 days in the twelve calendar months from the date of his alleged termination nor that Chattar Singh is junior to him. It has been held in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** that:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

18. Similarly, it has been held by the Hon'ble Apex Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat Vs Dayabhai Amar Singh** that:—

“Incuse workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

19. I disagree with the contention advanced on behalf of the petitioner that since the record pertaining to said Chattar Singh was in possession of respondent, it was required to be produced by it. It has been held by there lordships of Hon'ble Supreme Court in **AIR 2005 SC 2179, Manager RBI, Bangalore Vs. Mani & others** that **“Failure by employer to produce register of workmen for relevant period. No ground to hold that workmen had proved their case”**. In these circumstances, on the basis of the evidence, which has come, on record, particularly, the failure of the petitioner to have got summoned the relevant record pertaining to said Chattar Singh, the respondent also proves this fact that Chattar Singh is not junior to the petitioner.

20. After having discussed the legal aspects, pertaining to this case, as far as the relevant provisions of the Act are concerned, now, I proceed to discuss and decide the pivotal point as to whether the respondent has succeeded in proving that as to whether the petitioner had abandoned his job, on his own, or not. I may mention that in no unequivocal words/terms, the respondent has asserted that in the month of June, 2000, the petitioner had abandoned the job, on his own and that his services had not been terminated as alleged. This fact has been duly supported by Shri Mohinder Singh (RW-1). Apart from this, when regard is given to Ex. RE, (mandays chart of the petitioner), it becomes clear that in the year 2000, he had worked till June, in which month he had worked only for 161 days. This document further goes to show that thereafter, he did not work till October, 2001, in which year, he had only worked for 31 days i.e in the month of October. I have also observed that this document has not been controverted by the petitioner either by leading oral or documentary evidence. Ex. RA is the letter, which as per Shri Chet Ram (RW-2), the petitioner had delivered to him in Range Office Kandaghat, accompanied by the Pradhan, Gram Panchyat. Although, the genuineness of this letter has been strongly opposed/challenged on behalf of the petitioner but from his cross examination, when he appeared in the witness box as PW-2, it is highlighted that he admits of having appended his thumb impression on some paper which at that time was blank. I may observe that the petitioner has failed to explain that the blank paper on which he had put his thumb impression was not Ex. RA, on which the respondent is putting reliance that through it, he

(petitioner) had requested for his reengagement by clarifying that earlier, he had to leave the job due to domestic work. It is further to be noted that Shri Chet Ram (RW-2) has categorically stated that the petitioner had thumb marked on Ex. RA in his presence when he had come, accompanied with Pradhan and that he (PW-2) had received this letter, by signing it, encircled red. For getting himself reengaged, the petitioner had also made another letter Ex. RF dated 20.11.2001 as stated by Shri Chet Ram (RW-2). It is to be noted that the petitioner has not examined the Pradhan, who allegedly had accompanied him whom he gave letter Ex. RA to Shri Chet Ram (RW-2), who at that relevant time was forest guard, Kandaghat, in order to disprove the evidence/version of the respondent, regarding the same. It has been held by the Hon'ble Apex Court in *AIR 1979 SC 582, G.T Lad & others Vs. Chemicals and Fibers India Ltd.* that :

*“The findings of abandonment is a fact and the same has to be substantiated by leading evidence”.
There lordships have further held as under:*

“From the connotations reproduced above, it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.”

21. In the instant case, it has been proved that the petitioner has worked only for 161 days in the year, 2000 and thereafter, he did not turn up for about fifteen months. This clearly shows that he had abandoned the job, on his own. In the face of this proved fact, the contention/version of the petitioner (PW-2) that his services had been terminated w.e.f. 31.10.2001 becomes totally false. On the contrary, the respondent succeeds in proving, with sufficient, oral as well as documentary evidence, that the services of the petitioner had not been terminated w.e.f. 31.10.2001 but he had abandoned the job, on his own. This fact is further proved when Ex. RA is considered in which the petitioner has made a request for his reengagement by explaining that on account of his domestic work, he could not attend the job. I disagree with the Ld. Counsel for the petitioner that no reliance deserves to be placed on Ex. RA & other documentary evidence relied upon by the respondent. I may further like to mention that at the time of arguments, the counsel for the petitioner had submitted that since the petitioner had completed more than ten years when his services were allegedly disengaged, he was required to be treated as regular work. This contention is of no use because this Court is required to answer the reference in terms in which it has been made. I may further point out that the evidence led by the respondent that the petitioner had been issued notices to resume duties is also of no consequence as far as the decision of this case is concerned because the same have been issued after the receipt of this reference. Consequently, for my above discussion, I hold that the services of the petitioner had never been terminated by the respondent but he abandoned the job, on his own. Accordingly, my answer to this issue is in “Yes”.

Issue no. 1

22. In view of my detailed discussion and findings on issue no.3 above, wherein it has been held that the petitioner had abandoned his job, on his own, and that his services had not been terminated w.e.f. October, 2001, this issue does not require further determination or discussion and for this reason, it stands answered accordingly.

Issue no. 2

23. Since, I have already held while deciding issue no.3, that the petitioner had abandoned the job, on his own, and that his services had not been terminated in violation of the provisions of the Act, he is not held entitled to any service benefits and accordingly, this issue stands answered.

Issue no. 4

24. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for respondent could not explain as to why this petition is not maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 23rd July, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001**NOTIFICATION***Shimla, the 2nd December, 2010*

No. HHC/GAZ/14-249/2000.—Hon'ble the Chief Justice has been pleased to grant 12 days' earned leave w.e.f. 13.12.2010 to 24.12.2010 with permission to prefix 11th and 12th December, 2010 being second Saturday and Sunday and to suffix 25th and 26th December, 2010 being gazetted holiday and Sunday respectively in favour of Ms. Aparna Sharma, Civil Judge (Sr. Division)-cum-JMIC (I), Una, H.P.

Certified that Ms. Aparna Sharma is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Aparna Sharma would have continued to hold the post of Civil Judge (Sr. Division)-cum-JMIC(I), Una, but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171 001**NOTIFICATION***Shimla, the 2nd December, 2010*

No. HHC/Admn.6(23)/74-XIV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H.P. Financial Rules, 1971, Volume-I, has been pleased to declare the Civil Judge (Jr. Division)-cum-JMIC(II), Una as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Sr. Division)-cum-JMIC(I), Una and also the Controlling Officer for the purpose of T.A. etc. in respect of the establishment attached to the aforesaid Court under Head "2014-Administration of Justice" during the leave period of Ms. Aparna Sharma, Civil Judge (Sr. Division)-cum-JMIC (I), Una, H.P. w.e.f. 13.12.2010 to 24.12.2010 with permission to prefix 11th and 12th December, 2010 being second Saturday and Sunday and to suffix 25th and 26th December, 2010 being gazetted holiday and Sunday respectively or until she returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001**NOTIFICATION***Shimla, the 3rd December, 2010*

No. HHC/GAZ/14-219/96.—Hon'ble the Chief Justice has been pleased to grant 12 days earned leave w.e.f. 13.12.2010 to 24.12.2010 with permission to prefix 11th and 12th December, 2010 being second Saturday and Sunday and suffix 25th and 26th December, 2010 being gazetted holiday and Sunday respectively in favour of Shri Mukesh Bansal, Civil Judge (Sr. Division)-cum-CJM, Chamba, H.P.

Certified that Shri Mukesh Bansal is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Mukesh Bansal would have continued to hold the post of Civil Judge (Sr. Division)-cum-CJM, Chamba, but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 3rd December, 2010

No. HHC/Admn.6(23)/74-XIII.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H.P. Financial Rules, 1971, Volume-I, has been pleased to declare the Civil Judge (Sr. Division)-cum-ACJM, Chamba as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Sr. Division)-cum-CJM, Chamba and also the Controlling Officer for the purpose of T.A. etc. in respect of Class-II, III and IV establishment attached to the aforesaid Court under Head "2014—Administration of Justice" during the leave period of Shri Mukesh Bansal, Civil Judge (Sr. Division)-cum-CJM, Chamba w.e.f. 13.12.2010 to 24.12.2010 with permission to prefix 11th and 12th December, 2010 being second Saturday and Sunday and suffix 25th and 26th December, 2010 being gazetted holiday and Sunday or till he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

NOTIFICATION

Shimla, the 3rd December, 2010

NO. HHC/GAZ/14-52/74-V.—In the interest of administration, Ms. Anuja Sood, Civil Judge (Senior Division)-cum-JMIC(II), Shimla is transferred and posted as Civil Judges (Senior Division)-cum-JMIC(I), Shimla against the vacant post, with immediate effect.

**BY ORDER OF THE HON'BLE HIGH
COURT OF HIMACHAL PRADESH.**

Registrar General.

सिंचाई एवं जन स्वास्थ्य विभाग**अधिसूचना**

शिमला-171002, 27 नवम्बर, 2010

संख्या सिंचाई 11-58/2010-हमीरपुर.—यतः राज्यपाल हिमाचल प्रदेश को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार द्वारा सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव घनाल खुर्द तहसील व जिला हमीरपुर में पेयजल योजना पम्प हाऊस व टैंक के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इस से सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमतः सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के तीस दिनों की अवधि के भीतर लिखित रूप में भू-अर्जन समाहर्ता, मण्डी हिमाचल प्रदेश लो निर्माण विभाग, के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र/हैक्टेयर
हमीरपुर	हमीरपुर	घनाल खुर्द	255/1	0-00-39
		मौजा बजूरी	274/2	0-17-94
			किता-2	0-18-33

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव।

सिंचाई एवं जन स्वास्थ्य विभाग**अधिसूचना**

शिमला-171002, 27 नवम्बर, 2010

संख्या सिंचाई 11-53/2010-मण्डी.—यतः राज्यपाल हिमाचल प्रदेश को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार द्वारा सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः बल्ह घाटी मध्यम् सिंचाई परियोजना (वामतट्ट) तहसील सुन्दरनगर जिला मण्डी में पम्प गृह के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इस से सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमत: सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के तीस दिनों की अवधि के भीतर लिखित रूप में भू-अर्जन अधिकारी (नागरिक) सदर मण्डी के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	विधा / विस्वा / विस्वांसी
मण्डी	सुन्दरनगर	कलोहड़ / 27	944 / 1	1- 02-07
			955 / 2	0- 13-09
			957	0- 10-15
			958 / 2	0- 03-10
			959 / 2	0- 02-15
			962 / 2	2- 19-12
			985 / 1	0-10-07
			986 / 1	0-04-16
			937 / 1	0-05-00
			941 / 1	0-01-00
			931 / 1	0-00-10
			932 / 1	0-06-10
			927 / 1	0-07-10
			999 / 1	0-07-00
			किता-14	7-15-01
मण्डी	सुन्दरनगर	खिलड़ा / 28	579 / 2	0-09-01
			580 / 2	0-03-04
			584 / 2	0-03-17
			592 / 2	0-03-11
			किता-4	0-19-13
	सदर	करेहड़ी / 184	206 / 1	0-11-4
		मलथेहड़ / 192	492 / 2 / 1	0-09-12
		बुशैहर / 194	1103 / 2 / 1	0-09-12
		ढोह / 198	863 / 2	0-01-10
			864 / 2 / 1	0-07-13
	अरठी / 220		किता-2	0-09-03
			377 / 1	0-01-05
			किता-24	10-15-10

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव।

सिंचाई एवं जन स्वास्थ्य विभाग**अधिसूचना**

शिमला-171002, 27 नवम्बर, 2010

संख्या सिंचाई 11-57/2010-ऊना.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार के अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव प्रताप नगर (अम्ब) तहसील अम्ब जिला ऊना में पेयजल योजना अम्ब टयूवैल नं० 4 के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इस से सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमतः सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. अत्याधिक आवश्यकता को दृष्टि में रखते हुये राज्यपाल उक्त अधिनियम की धारा-17 की उपधारा-4 के अधीन यह भी निर्देश देते हैं कि उक्त अधिनियम की धारा-5-ए के उपबन्ध इस मामले में लागू नहीं होंगे।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र हैक्टर में
ऊना	अम्ब	प्रताप नगर (अम्ब)	1947/1592/1	0-00-28
			1942/1592/1	0-02-10
			1972/1613/1	0-00-07
			1981/1619/1	0-00-13
			1988/1622/1	0-00-14
			2019/1624/1	0-02-30
			1965/1596/2	0-00-06
			2038/1625/1	0-00-32
			किता-8	0-05-40

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव।

